V.W. Bladen

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

ON AN INQUIRY INTO

LOSS-LEADER SELLING

DEPARTMENT OF JUSTICE
OTTAWA

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955

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RESTRICTIVE TRADE PRACTICES COMMISSION

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RESTRICTIVE TRADE PRACTICES COMMISSION

Ottawa, March 28, 1955.

Honourable Stuart S. Garson, Q. C.,
Minister of Justice,
Ottawa, Ontario.

Sir:

We have the honour to present to you the report of the Restrictive Trade Practices Commission arising out of an inquiry under Section 42 of the Combines Investigation Act into the subject of loss-leaders.

Acting on the recommendation contained in the report of the Committee to Study Combines Legislation, in 1952, the Director of Investigation and Research commenced a thorough study of the loss-leader practice in November of that year, immediately after the appointment of this Commission and the coming into force of amendments to the Combines Investigation Act which made provision for general inquiries of this nature. The material collected by him was compiled in book form, described in this report as the Green Book, and submitted to the Commission on February 16, 1954.

To secure as complete and accurate information as possible from all interested persons, the Commission after due notice conducted public hearings throughout the spring and summer in Ottawa, Toronto, Montreal, Saskatoon, Edmonton, Victoria and Vancouver, with final hearings again in Ottawa in September, 1954.

Throughout the inquiry the Commission received the utmost in co-operation from all who took part in the proceedings, whether in their individual capacity or as representing business, consumer or other organizations. We were impressed by the sincerity of all who appeared before us and in many instances by the effort and obvious care expended in the preparation of briefs. The facts disclosed and arguments advanced throughout the inquiry have afforded us great assistance in our endeavour to make a true appraisal of a complex situation.

In similar vein, the thanks of the Commission are due to the country's press and radio, particularly to the press, whose continuous coverage of the inquiry, from the publication of the Green Book to the close of the Commission's hearings, kept the relevant questions before the minds of interested persons throughout the country. Without this publicity, it is very probable that some of the material brought before us would never have been made available.

Counsel appointed for the inquiry were Mr. W. N. Wickwire, Q. C., of Halifax, and Mr. Paul Gérin-Lajoie of Montreal. Their skill, knowledge and experience were of great value throughout the hearings, more particularly in eliciting the full purport of statements and arguments presented by persons appearing before the Commission.

We desire to express our deep appreciation of the heavy and arduous duties performed by the secretary for the inquiry, Mr. Roy M. Davidson, whose knowledge of economics and very considerable abilities have been made freely and fully available to us throughout the hearings and in the preparation of this report.

Yours faithfully,

(Sgd.) C. R. Smith

Chairman

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CHAPTER I

ORIGIN AND NATURE OF THE INQUIRY

1. Investigation Proposed by the Committee to Study Combines Legislation

The origin of this inquiry into loss-leaders in Canada goes back to the report of the Committee to Study Combines Legislation, generally known as the MacQuarrie Committee. This Committee, appointed in June, 1950, made an interim report in October of 1951 on the particular problem of resale price maintenance. This report held that "the prescription and the enforcement of minimum resale prices must be viewed as manifestations of a restrictive or monopolistic practice which does not promote general welfare". The Committee, therefore, recommended that "it should be made an offence for a manufacturer or other supplier:

1. To recommend or prescribe minimum resale prices for his products;

2. To refuse to sell, to withdraw a franchise or to take any other form of action as a means of enforcing minimum resale prices."

Representations had been made to the Committee that the abolition of resale price maintenance would open the door to widespread loss-leader practices. The report stated that the Committee believed the loss-leader device to be "a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest". However, the Committee did not believe the practice presented any immediate danger.

Parliament adopted the Committee's recommendation concerning resale price maintenance by enacting what is now Section 34 of the Combines Investigation Act, which came into force on December 29, 1951. This section forbids a manufacturer or other supplier from requiring or inducing, directly or indirectly, any other person to resell an article at a specified price or at not less than a minimum price, and makes it unlawful for a supplier to refuse to sell or supply an article or commodity to any other person for the reason that such person has resold or offered to resell the article or commodity at less than a price specified by the supplier or has refused to resell or offer for resale the

commodity at not less than a specified price.

In its final report, presented in March, 1952, the Committee recommended that the functions previously exercised by the Commissioner of the Combines Investigation Act should be divided between two bodies:

(1) An investigation and research agency,
(2) An administrative board reporting to the Minister of Justice,

and that "the 'loss-leader' practice should be referred by the Minister for thorough study by the proposed agency and board with a view to determining its prevalence and its effects and to recommending to the Minister suitable amendment, if necessary, of the Act".

2. Material Collected by the Director of Investigation and Research

The reorganization in the administration of the Combines Investigation Act and related statutes which had been recommended by the MacQuarrie Committee came into effect on November 1, 1952, when the office of the Commissioner was replaced by the Restrictive Trade Practices Commission, whose principal function is that of carrying out the Commissioner's former duties of holding hearings and making reports, and the Director of Investigation and Research whose duties include conducting investigations into possible breaches of the legislation, doing research into the problems of competitive behaviour and placing the results of such studies before the Restrictive Trade Practices Commission. Immediately following this reorganization, the Director, with the assistance of certain members of his staff, began a detailed inquiry into the question of loss-leader selling as proposed by the MacQuarrie Committee.

The Director's inquiry was pursued with care and thoroughness, seeking to obtain information that would be as complete and accurate as possible. As part of the inquiry a number of well-designed questionnaires, to which reference will be made from time to time in this report, were sent out from the Director's office. These were as follows:

(1) A questionnaire of a general character, sent out, on November 4, 1952, to a large number of individual firms, to trade associations, and to consumer, labour, co-operative and farm groups, covering twelve points relating to the nature and effect of loss-leader selling. This will sometimes be referred to as the twelve-point questionnaire;

(2) A special questionnaire sent out on June 11, 1953, to all grocery and combination (grocery and meat) chain stores in Canada;

(3) A special questionnaire, sent out during the summer of 1953 to 180 retail druggists in the City of Montreal;

(4) A special questionnaire sent out in September, 1953, to 174 retail dealers in household electrical appliances;

(5) Questionnaires sent out at different dates during the spring of 1953 concerning alleged loss-leader selling of cigarettes in the Winnipeg and Vancouver areas.

The results of the Director's inquiries and general information bearing on the subject of loss-leaders as a merchandising practice were incorporated in a book of more than 300 pages and submitted to the Commission by the Director on February 16, 1954. For purposes of brevity this statement will be referred to in this report as the Green Book. In addition, the Commission received from the Director, at this time, a substantial amount of material embodying representations in connection with loss-leader selling, and also a collection of information and opinions on the same subject, which had been assembled during the inquiry from a variety of sources, including the trade press, governmental investigations, government agencies enforcing legislation designed to control loss-leader selling, studies by economists, etc. It was impracticable, by reason of bulk, to include all this material in the Green Book.

The whole mass of material collected by the Director has proved to be a veritable mine of well ordered factual information, the reliability of which has been confirmed at many points during the course of the Commission's proceedings.

3. Steps Taken by the Restrictive Trade Practices Commission

On March 17, 1954, the Restrictive Trade Practices Commission made a public announcement that it had received the statement of facts and information (the Green Book) from the Director of Investigation and Research and that it was now the Commission's function to consider this statement, together with such other evidence and material as it might obtain, and report thereon to the Minister of Justice.

In its announcement the Commission stated that it would begin its study on the basis of the material received from the Director and that it would welcome any further evidence or material which

might be of assistance in its consideration of the subject, which any organizations, groups or individuals might wish to submit. For this purpose the Commission would hold public hearings as soon as those who desired to make submissions made their intentions known. The Commission indicated further that it was seeking to secure factual information and opinion from all parts of Canada relating to all aspects of the problem of loss-leader selling, including specific instances of the practice, the consequences for merchants using loss-leaders and those not doing so, the incidence of the practice in particular trades or localities, the effects upon the reputation and acceptance of products used as loss-leaders, and upon those supplying or distributing them, and the general effects of the practice on consumers and business. Views were also sought as to the need, if any, for remedial measures and as to the type of remedy. Organizations and individuals wishing to make representations were invited so to advise the Commission, indicating where they wished to appear. A press release of the Commission's announcement was sent to the press associations, to 84 daily newspapers, to 168 weekly newspapers, and to 56 trade journals.

On April 2 the Commission sent letters to approximately 500 individuals and organizations, inviting representations and indicating that the inquiry was intended to cover all aspects of the problem of loss-leaders, but in particular was concerned with securing accurate factual data upon such aspects as: (1) Specific instances of loss-leader selling in particular articles or types of merchandise or localities, and their duration; (2) General loss-leading practices by particular dealers or in particular trades or localities, and the frequency and duration thereof; (3) By whom such specific instances or general practices were instituted; (4) The effect of the loss-leader selling of a particular article upon (a) sales of that article by the dealer using it as a loss-leader, during the loss-leader period and afterwards; (b) sales of that article by competing dealers who did not use it as a loss-leader, during the loss-leader period and afterwards; (c) sales of that article by competing dealers who met the loss-leader price; (d) sales of other merchandise by the dealer who made use of the loss-leader, during the loss-leader period and afterwards; (e) sales of other merchandise by competing dealers who did not use it as a loss-leader, during the loss-leader period and afterwards; (f) sales of other merchandise by competing dealers who met the loss-leader price; (g) the total sales of that article in the area affected, during the loss-leader period and afterwards; (h) the general sales of products of the manufacturer of that article in the area affected; (i) the reputation and acceptance of that article among dealers and the consuming public.

In these letters the Commission also stated that it was anxious to obtain as complete expressions of opinion as possible upon: (1) What constituted a loss-leader and what types of merchandise were commonly used as such; (2) The percentage of total sales made on a loss-leader basis with respect to the particular article and with respect to articles of the same class or in the same field of trade; (3) The

general effects of loss-leader selling practices upon merchandising generally, upon manufacturers, wholesalers, retailers and consumers; (4) The effect of changes in the level of business activity upon the use of loss-leaders; (5) The need or otherwise for remedies, and if need appeared to exist, what remedies might be employed, with their probable effect.

On April 28, 1954, in a press release, the Commission announced that for assistance in preparing their briefs, it was mailing copies of the Green Book to all those who had indicated an interest in submitting their views on the nature and extent of the practice. An invitation was again extended to any individuals or organizations desiring to appear at hearings to make their wishes known. It was indicated that hearings would be held in Ottawa, Toronto, Montreal and Vancouver, and might be arranged in other large centres where the numbers of those desiring to appear made this course desirable.

In response to the Commission's invitation many individuals and organizations indicated that they wished to appear and make representations or give information. The number of those who actually appeared at the hearings was considerably less, as many persons and organizations who first indicated intention to appear subsequently decided not to do so. The Commission expressed its willingness to hold hearings in any centres in Canada where the attendance of interested persons or organizations would justify the holding of a session. After a reasonable time had been allowed for requests to be made for hearings, it appeared that briefs would be presented only at Ottawa, Toronto, Montreal, Saskatoon, Edmonton, Victoria and Vancouver. Some weeks prior to the opening of the hearings in each city an announcement was made by press release and letter of the time and place of the hearings, and an invitation was again extended to anyone interested in making representations so to advise the Commission. The dates of the hearings in the various cities were as follows: Ottawa, May 19 and 20; Toronto, May 31 to June 4; Montreal, June 7 to 10; Saskatoon, June 29; Edmonton, June 30; Victoria, July 2; Vancouver, July 5 to 9. As some organizations had indicated that they required more time to prepare submissions, final hearings were held in Ottawa from September 13 to 18. An invitation was also given to those who had appeared earlier to make a further submission at the final hearings if they so desired.

In all, public hearings were held on 25 days and the transcript of the proceedings ran to approximately 4,000 pages. Voluminous exhibits were also filed. The Commission received representations at the hearings from 29 organizations or groups and from 24 individual companies or persons. The number of persons appearing in delegations or individually totalled 134. A complete list of appearances will be found in the Appendix.

In the United States, legislative experience in the field of resale price maintenance and loss-leader selling has been more widespread and of much longer duration than in Canada. At the same time business ideas and practices in the two countries are similar in a great many ways. The Commission, therefore, considered that an authoritative statement of the American situation in these matters would be most helpful in our attempt to make an accurate analysis of the Canadian scene. Accordingly, invitations to appear at Commission hearings were extended to two distinguished American economists, who, by reason of extensive studies over many years in various types of marketing problems, the results of which had been embodied in their various books and writings, were particularly well qualified to discuss and explain American experience.

These two economists, Dr. E. T. Grether, Dean of the School of Business Administration at the University of California, and Dr. Vernon A. Mund, Professor of Economics at the University of Washington, very generously accepted our invitation, Professor Mund appearing at the Vancouver hearings of the Commission and Dean Grether at the final hearings in Ottawa. It would be difficult to overestimate the value of their practical experience and analytical knowledge of developments and tendencies in American business. The Commission is deeply appreciative of their keen interest and friendly willingness to assist by applying their special knowledge to current merchandising developments, the more so because their visits to us were made at times when they were under heavy pressure of work from other commitments.

All hearings in this inquiry were held in public, and counsel were retained to assist the Commission in developing those aspects of the various briefs upon which counsel felt the Commission might wish additional information, and to assist the parties appearing in making the intention and implications of their submissions as clear to the Commission as possible.

The Commission endeavoured throughout to give every opportunity to interested individuals and groups to make representations and supply information on any aspect of loss-leader selling.

CHAPTER II

REPRESENTATIONS MADE AS TO THE NATURE AND INCIDENCE OF LOSS-LEADER SELLING

1. Definitions of Loss-Leader Selling Proposed to the Commission

From all studies of the problem of loss-leader selling to which the Commission has been referred, and from many of the representations made to the Commission and to the Director, it appears that a major difficulty in approaching the examination of practices alleged to involve loss-leader selling, is to obtain a clear description of the forms of selling which would unmistakably constitute such a practice, and not merely active price competition. Indeed a satisfactory definition is so elusive that a number of those appearing before the Commission stated that they did not know how loss-leader selling should be defined (p. 1828),* or that there was no point in trying to define it (p. 3452), or that it cannot be defined (pp. 1052, 3982, 4300). In a recent book entitled "The Economics of Resale Price Maintenance", B. S. Yamey, Reader in Economics, University of London, referred to the problem in the following terms:

> "There are many different definitions of loss-leader or leader selling. Thus it has been defined as sales below invoice cost, sales below invoice cost and an unstated share of general overheads, sales at prices which do not carry 'their share of overhead costs,' sales that do not achieve a 'full mark-up', and sales below 'established prices'. In this study it is not necessary to attempt to unravel the confused tangle of terminology or to add another strand to it. Here the term will be used to denote 'selective' as contrasted with 'general' price-cutting, since all definitions imply that price reductions of the loss-leader variety are limited to a few articles in a large assembly of merchandise. However, it may be pointed out that in practice the term 'loss-leader selling' is often used as an expression of disapproval rather than as a description of a readily recognizable phenomenon."

In the representations made to the Commission the definitions proposed may be roughly divided into two categories, depending on whether the emphasis in the definition was in terms of the purpose of the price-cut or whether it was in terms of the extent of the price-cut.

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* Page references throughout this report, unless otherwise indicated, are to the transcript of the Commission's hearings.

In its brief Canadian General Electric Company Limited stated (p. 852) that some notion of intent was usually associated with the practice of loss-leader selling. It was suggested that the intention may be to create the impression that everything sold by the retailer is sold at a corresponding bargain or merely to attract additional traffic in order that other merchandise providing a higher markup may be sold, or simply to increase over-all sales volume, or to retaliate against the price-cutting of a competitor, or to embarrass a manufacturer or distributor for some real or fancied fault.

One of these aspects was singled out in the definition given by the Canadian Manufacturers' Association (p. 112) when it stated that the price of an article used as a loss-leader is fixed, not from the point of view of making a profitable sale of that article, but for the purpose of bringing people into the store so that profits may be made on the sale of other articles. It was pointed out that under this definition, loss-leader selling would involve a fairly substantial price-cut and would not apply to articles repeatedly or commonly sold for merely slightly less than some standard price. Aside from the fact that changing conditions frequently force retailers to sell particular items below their normal markups, even though the items are not being used as "leaders", the difficulties which this raises are immediately apparent when the point is rephrased as it was in another definition proposed to the Commission. In that instance it was stated (p. 544) that the purpose of a loss-leader is to attract buyers into a retail store in order to bring other merchandise to their attention. Whether the use of a loss-leader in this sense is less desirable than advertising or other forms of sales promotion is a question that immediately comes to mind.

The major difficulty with a definition along these lines however springs from the interdependence of prices in modern merchandising in which large assemblies of merchandise are common. The point is clearly made by Seligman and Love at pp. 123-124 in their book "Price Cutting and Price Maintenance":

> "The business man, indeed, acts in general in order to secure a profit, and in this sense profits are a condition of price. But by profits must be understood the profits of the business as a whole, and not necessarily the profits of the business in detail. Profits as a whole may be compatible with losses in detail. In the practice now before us, the ultimate objective of profits as a whole depends upon immediate losses of a particular kind. How is this possible?
>
> In the first place, it must be remembered that few producers limit their output to a single product. Most manufacturers, and a still greater proportion of distributors, whether wholesale or retail, deal in their ordinary course of business with a large number of articles. Even the automobile agency which is limited to one particular make of car, not only carries different models in stock,

but usually engages in the used car business, sells parts and, perhaps, conducts a banking enterprise. The pricing policies in any one of these branches is necessarily formulated in a way which will not react unfavorably on the remainder of the business. But from this comparatively simple type, where only a small number of different products are sold, there is a gradation to the most complicated forms of enterprise, culminating in the large department stores with their thousands of products, and with the mail-order firms with their tens of thousands. Nowadays a firm does not have to be a large one to deal in a great variety of products. Even a modern drug store in a small town can carry a large number of drug items. A wholesale hardware merchant recently increased his business materially by the reduction of items carried by him from 15,000 to 7,000. Under the conditions created by this astounding multiplicity of items, it is scarcely surprising that business men look for the effect which a given price on a single article may exert upon the remainder of the business quite as much as they consider the result of selling the particular article at a price which will net them a profit. Modern business, in other words, is a composite phenomenon, and the prices of all the articles dealt in must be considered primarily as interdependent prices. If the volume of sales of a few thousand items appears to be at stake, it may be good business for a distributor to sacrifice his profits on a single item and perhaps even to sell at a loss. . . ."

A purpose of a more predatory character was suggested in a number of the briefs submitted to the Commission. It was said (p. 559) that the object of loss-leader selling was not simply to improve the business of the dealer engaging in the practice but to undermine that of his competitors. The result intended was to drive a number of these competitors out of business, with the expectation that prices could then be raised to recoup the losses incurred and obtain high profits thereafter. Some of the briefs stated that the small operators in the business were the intended targets of loss-leader selling. It was suggested (p. 3172) that the situation was similar to geographical price discrimination, where a multiple unit enterprise might cut prices in one community while maintaining them elsewhere, in order to drive competitors out of business, the difference being that in the case of loss-leader selling the intent was to drive competitors out of business by the selective price-cutting of some articles in the retailer's assembly of merchandise.

It was in this direction that the Canadian Association of Consumers felt that a definition of loss-leader selling should be sought. Its brief stated (p. 1732) that the Association was unable to present a survey of consumer opinion on loss-leader selling because of the confusion existing in the trades affected over the meaning of the expression, and suggested that all too often the term loss-leader is applied to what the Association regards as healthy price competition. This group quoted the following view expressed in the Report of the Royal Commission on

Price Spreads:

> "We suggest that practices should be prohibited as unfair which are characterized by bad faith, fraud, misrepresentation, or oppression; which are resorted to for the purpose of destroying competition or eliminating a competitor; which facilitate the development of monopoly; or which destroy fair competitive opportunity and prevent the survival of those who can organize and carry on the production of goods most efficiently."

The Association said that the only meaning the consumers group could give to loss-leader selling was the adoption by a financially stronger competitor of a policy of selling at a loss, as a means of putting a weaker competitor out of business. Since all means of eliminating competitors except those of offering better services or superior goods were against the best interest of the consumer, it was said that where loss-leader practices created small monopolies in local trades, thus reducing the public's freedom of choice and exposing it to monopoly prices, they should be curtailed. It was suggested that any prolonged or systematic price-cutting, where reasonable profits were foregone without adequate explanation, should be suspect as an attempt to create a monopoly. However, the Association added the caution that loss-leader selling would not include the lowering of regular prices on special articles as a result of savings accruing from ordering in large quantities or selling in great volume, nor would it include the low prices made possible by types of operations which involved low overhead costs.

A major problem however with a definition based upon intention to eliminate competitors is that recognition of the practice then largely depends upon a subjective standard which makes analysis extremely difficult. The problem is compounded when the question of regulation is considered, which is no doubt what led Professor Mund to express the view that in the field of business regulation, what has to be studied is business practices and their effects, leaving aside the question of motives (p. 3199). A similar point was made to the Commission by Dean Grether (p. 3270) who stated he did not like to see attempts made to prohibit something called loss-leader selling in general terms. Among his reasons was the fact that it was very difficult to define loss-leader selling in such a way as to be sure that the regulation dealt only with detrimental practices. He pointed out that, unless an arbitrary concept was used, a good portion of the analysis involved a rather subtle interpretation of the intent of the user, which made it very difficult to segregate something called loss-leader selling from normal aggressive price competition. The Co-operative Union of Canada (p. 3755) also expressed doubts about the usefulness of a definition of loss-leader selling based on intent. It was suggested that whether an article was used merely as a leader or whether it was actually used as a loss-leader, in each case the hope of the user of the device was to attract more customers into the store. It was said that it was not very helpful to introduce the idea that the device must be used

for the purpose of injuring competition or competitors, because if a retailer is successful in using any competitive practice to attract more business, this cannot help but have an adverse effect on his competitors to a greater or lesser extent.

In the definitions of loss-leader selling which gave emphasis to the extent of the price-cut, the price below which it was argued an article could not be sold without being considered a loss-leader, ranged through the entire gamut from the manufacturer's suggested retail price to the lower of invoice or replacement cost.

Canadian General Electric Company Limited stated (p. 853) that everyone would agree that when a retailer featured a recently acquired product at a price below his net purchase cost, he was using the product as a loss-leader. However, the Company was not satisfied with this definition, nor with a definition which would consider the practice to exist only when the retailer sold below his acquisition cost plus a markup to cover his operating expenses. The Company contended (p. 854) that characteristics which particularly affected the small appliance business made it possible for some retailers, by selling at a low markup over cost to cash in on the efforts of other retailers, and therefore any deviation from the manufacturer's suggested retail price should be considered loss-leader selling. This was also the view of Sunbeam Corporation (Canada) Limited (p. 121). Drug Trading Company Limited took a similar position (p. 352) in suggesting that there is no adequate definition of loss-leader selling, but that any sales below the manufacturer's suggested price could be said to be price-cutting or loss-leading.

The Allied Beauty Equipment Manufacturers' & Jobbers' Association took the position that articles sold at an actual loss to the vendor constituted an extreme case of loss-leader selling, the more common case being the sale of articles at less than the usual markup. Similarly the National Council of the Baking Industry stated (p. 140) that the selling of bakery products at a price which reflected less than the full recovery of all costs plus a normal average markup should be suspect. They would exclude staling products from the definition and also suggested that factors such as turnover would have to be taken into account in determining in a given situation whether loss-leader selling was in fact taking place. Recovery of the vendor's average markup was also proposed (p. 405) as the criterion for determining the existence of loss-leader selling in other representations.

The Canadian Wholesale Hardware Association urged (p. 453) that loss-leader selling should be considered to exist when an article was sold at a price which did not cover the average operating expenses of dealers in the trade where the product was most commonly sold. Another definition was proposed which would regard the consistent selling of a product below the price required to cover the average cost of doing business in the trade as loss-leader selling. In this

definition exceptions were admitted for articles sold at low prices to correct an overstocked position, or because the dealer was going out of business (p. 2574). Other presentations also provided for an exception being made in the case of articles sold below cost, where this was necessary to correct an overstocked position (p. 754).

A variation of this definition would regard as a loss-leader a product sold at a price insufficient to cover the operating costs of retailers competing with the vendor (p. 3039). In this connection, the suggestion was made that although the sale of a product at a particular price might not constitute a loss-leader for one retailer, it might be a loss-leader for another retailer who met the price, and was just as efficient, but who was unable to buy as advantageously (p. 3994). This last suggestion involves the rather curious argument that a reduction for the sole purpose of meeting a competitive price is loss-leading, or alternatively, that the initiating retailer, though not selling at a loss himself, is loss-leading because he, in effect, forces the other retailer into selling at a loss.

One definition suggested that when a product was sold below the manufacturer's lowest selling price available to the trade plus the vendor's average cost of doing business it should be regarded as a loss-leader (p. 3460). An exception was suggested for the sale of staple food products which traditionally carried a low markup, generally recognized as being lower than a retailer's average cost of operation, but which were not considered loss-leaders because of their rapid turnover (p. 3492). A somewhat different definition proposed in a number of briefs suggested that loss-leader selling was involved in the sale of any merchandise at a price equal to or less than the laid down cost plus the vendor's average overhead (pp. 546, 908, 1288).

In Dean Grether's view (p. 3272), any attempt to base the definition of loss-leader selling on the average cost of operation is objectionable because it implies that an article should carry average costs, which he said obviously was not true in that there are marked variations in the costs of handling and selling different articles in the same store. At page 5 of the Green Book the following comments, to the same effect, are found:

> "The difficulty encountered by definitions that identify as 'loss-leaders' all items sold below the 'average' mark-up for all products in the dealer's assembly of goods, is that, on a purely mathematical basis they throw into the 'loss-leader' category all items sold below the average mark-up without regard to faster rates of turnover, lower handling costs and other factors that might justify lower than average mark-ups. In the grocery field, in particular, a number of the major staples are sold at mark-ups that are substantially below the average for all lines handled. Under such definitions this important group of products, which generally have a fast turn-over, would fall into the 'loss-leader' category."

It was suggested by another witness (p. 3162) that a loss-leader is an article sold below the cost of acquisition plus the markup necessary to provide a reasonable profit in the handling of the particular article. This submission also pointed out that handling costs vary from article to article.

Canada Safeway Limited also pointed out that in many cases quite a satisfactory profit can be made on an item that sells at substantially less than the average markup for all items handled, particularly if the item is one which has a rapid turnover. They further contended that a product cannot be a loss-leader unless a real loss is involved. They therefore proposed, as a definition of a loss-leader, a sale made at a price below the lower of invoice or replacement cost with the purpose of injuring competition or misleading customers. This definition would except selling at a low price when a product or line is being discontinued, or in order to clear seasonal, perishable or damaged goods, or to meet competition.

Another definition proposed in several submissions, including that of the Canadian Retail Hardware Association (p. 3658) was that the term loss-leader should be used to refer to a product sold at a price below the laid-down cost for retailers competing with the vendor (pp. 1006, 2481).

A number of the briefs defined loss-leader selling as the practice of selling goods below the cost of acquisition to the vendor (pp. 609, 766, 2452, 3754). Dean Grether thought that this was the definition which had been most widely employed (p. 3271). He defined a leader as any article which was featured with the intent of selling not only that item but other merchandise as well, and suggested that whether in a given situation the leader was also a loss-leader was a very difficult question of fact (p. 3317). He suggested that when a retailer advertised a product at 10% less than the usual markup, the retailer might get enough business on that article alone to make the price reduction profitable. Then the question of how much additional business on other merchandise the retailer enjoyed, which he otherwise would not have got, had to be considered. Also the fact that the cost of handling a given item depends on the volume of business done must be considered because up to a point, stepping up volume always tends to reduce costs. Finally, beyond the acquisition cost and any other direct cost attributable to a given article, the allocation of costs to any department, and more so to any article in the dealer's assembly, must vary with judgment and may be entirely arbitrary. Dean Grether therefore suggested that whether or not an item was a loss-leader depended upon the percentage of reduction below normal, the manner in which costs were allocated and the extent to which the volume of sales of the featured article and of other merchandise was affected. In Dean Grether's view, if the retailer continued reducing the price, he would reach a point where the product was clearly a loss-leader, but this point could not be defined with certainty, short of a sale below acquisition cost.

It was also the view of Professor Mund (p. 3172) that the problem of loss-leader selling centred on the sale of a product below the seller's net acquisition cost, because, as he said, it was too difficult to determine costs of operation, because the cases which were really injurious to society or to other business men were those cases in which sales were made below laid-down cost, and because the question of markup over acquisition cost was a matter of business policy, similar to such questions as the amounts which should be invested, or produced or sold, questions which, in a free economy, should be left to the business man and not dictated by anyone else (p. 3174).

Several briefs (pp. 1208, 2627) emphasized another aspect of the question by giving prominence in their definitions of loss-leader selling to the price-cutting of an article which the vendor did not normally stock. In these submissions this form of promotion was characterized as a particularly predatory practice, even by one witness who regarded the selling of an article at or near landed cost for the purpose of creating traffic as merely providing the consumer with an honest bargain.

The question of premiums was introduced into the definition of loss-leader selling in several presentations, one of which (p. 1637) suggested that, while frequently the term loss-leader referred to the sale of an article below laid-down cost, usually it meant much more than this and included the practice of giving away one article with the purchase of another article of greater value.

The British Columbia Division of the Retail Merchants Association of Canada introduced another complicating factor into the definition of loss-leader selling, in stating (p. 2630) that it was a form of advertising, promotion or traffic stimulation which did not differ materially from other promotional activity which was also deceptive or predatory. In this group's opinion the problems of loss-leader selling and those of certain kinds of misleading advertising were inseparable, and the effects of such practices were equally bad. Other representations concurred in this view, or at least included in their definitions of loss-leader selling the advertising at cut prices of products which the dealer did not have on hand or which he was unwilling to sell (p. 607). On the other hand, it was the opinion of Dean Grether (p. 3271) that it was important to draw a distinction between the practice of loss-leader selling and the practice of bait selling, which he defined as the advertising of a product at a price reduced below normal with no intention of having sufficient supplies to meet demand. He suggested that bait selling was deceitful and might well be prohibited.

In the questionnaire which the Director sent out on November 4, 1952, to a large number of individual firms, trade associations, consumer, labour, co-operative and farm groups, the first question asked read as follows:

> "What precise definition (or definitions) of the term 'loss-leader' do members of your organization employ. If any of these involve the matter of 'cost', please indicate clearly what type of cost is meant, e.g., invoice cost, specific handling costs, average handling cost, etc."

Altogether, 111 replies were received which dealt more or less comprehensively with the questionnaire although not all of them attempted to answer every question. The answers to the question set out above demonstrated an even greater diversity of opinion than the definitions proposed to the Commission during its hearings, although the main points raised were very similar.

The second question asked, in the twelve-point questionnaire read:

> "How the 'loss-leader' practice can be distinguished from such well recognized merchandising practices as the clearance of damaged goods, surplus stocks and end-of-season stocks; one-cent sales; price reductions on new goods to introduce them to the market; price reductions that reflect differences in costs of goods and in operating efficiency; and price differences that reflect differences in the method of marketing (as super-markets and drug stores selling the same product)."

The purpose of this question was to find out how in fact, one type of price reduction -- a loss leader, could be distinguished from other types. Some of the replies received attempted to distinguish the practice by defining the goods commonly used as loss-leader, others by defining the types of goods which would not be so used. Another distinction given was that the object of the loss-leader was to attract buyers to other goods, whereas "legitimate" bargain sales were intended to correct a specific condition relating to the goods on sale. Another suggestion was that the main difference between loss-leader selling and more orthodox special sales was the misrepresentation associated with the former. Other suggestions dwelt on the regularity of advertising said to be associated with loss leaders. Another distinction drawn was that loss-leaders were sold at a reduced markup during the best season for the goods. One reply suggested that the method of advertising used was the only way to distinguish loss-leaders from sales of damaged goods, surplus stock, etc., because merchants usually referred to the latter as "shop-soiled", "left-overs" etc. One distinction suggested was that fewer items were involved in any one loss-leader sale than was the case with other "sales". Some replies merely asserted that loss-leader selling could be distinguished from clearance of damaged goods, surplus stocks, end-of-season stocks etc., without elaboration. One reply suggested that it would be a simple matter for someone in the retail business to distinguish such practices, but that it would be a difficult matter for someone not familiar with retailing. Other replies said that there was little difference among the practices referred to or that it

was impossible to distinguish them.

2. Comments of the Commission on the Problem of Definition

From all of the foregoing, the one fact which stands out is the complete lack of agreement among business men as to the meaning of the term loss-leader. This remarkable divergence of opinion appears to arise partly from the varying impact of price reductions upon different kinds of business and partly from difficulties inherent in any attempt to formulate a definition to describe a condition of competitive selling rather than a practice of any exact character. In this connection, it is noteworthy that the report of the MacQuarrie Committee did not attempt a complete definition of loss-leader. It simply described the loss-leader device as "an aggressive weapon designed to attract customers for a whole range of goods by a particular type of selective and excessive price-cutting". The report then continued: "Usually a well-known brand is used as 'loss leader' and it is sold at a price which has no direct relation to cost and may even result in a net loss". While this description does not amount to a precise definition, it does set forth in a general way what the Committee had in mind when it referred again to the device as "a monopolistic practice which does not promote general welfare and . . . is not compatible with the public interest".

The various descriptions which have been given of loss-leader selling in the submissions made during the inquiry have been studied intensively by the Commission because the task of discussing a problem and reaching intelligent conclusions upon it is simplified if one has a clear-cut picture of the thing one is dealing with. If there are conditions which it is represented require remedial action by way of legislation, the matter of an adequate description becomes even more important.

It would seem that, grammatically, and in theory, the term loss-leader as applied to a merchandising practice, involves two elements. In the first place, the article must be sold at a price which results in a loss to the seller. In the second place the practice must be intended to draw or lead customers into the seller's place of business, usually in the expectation that profitable sales of other products will be increased thereby. If a selling practice does not include both of these elements, it cannot, strictly speaking, be described as loss-leader selling. Thus, end-of-season clearances, disposition of broken lines, sales of overstocked goods, sales to raise money to meet urgent cash requirements, and all similar cases where the purpose is primarily to dispose of those goods, and not to increase the seller's general sales volume, would not appear to be instances of loss-leader selling, even though they may result in a loss to the seller.

If, in addition to or instead of obtaining an increase in profitable sales of other products, the purpose of the practice is to injure competitors of the seller or drive them out of business, it may be an oppressive trade practice, monopolistic in character. It is oppressive if, by reason of financial strength, size of operations or other circumstances, the seller is able by such means to cause material prejudice to smaller and weaker competitors. This is the most extreme form of loss-leader selling, and one about which there is no difficulty in reaching the conclusion that it is detrimental to the public.

In seeking to understand the nature and extent of loss-leaders the Commission has faced one of its most difficult tasks in trying to find a basis for deciding what meaning should be given to the term "loss" in the context of loss-leader selling. The simplest and most obvious meaning of that expression is a selling price that is below the delivered cost to the seller. Any sale on such a basis is clearly a sale at a loss. But, in most of the suggested definitions of loss-leaders that were proposed to the Commission, such a meaning was regarded as being too narrow. No dealer can operate without expense. It costs him something to handle and sell even the smallest article. Consequently a retail price which merely returns to the dealer the amount that he paid for the article necessarily results in some loss to him. The difficulty is to find any reliable rule for determining in any particular case how much the dealer requires above the delivered cost to him in order to avoid an actual loss on the sale.

Depending on their approach to the whole question of loss-leaders, organizations and individuals making representations to the Director and to the Commission proposed various rules for determining the price (above delivered dealer cost) below which a sale should be regarded as being at a loss. These included (among others) a price that was less than delivered cost plus:

(a) a fixed percentage markup,
(b) the average cost of doing business in the particular trade,
(c) the particular dealer's average cost of doing business,
(d) a full normal markup.

They also included: (e) a sale below "the established price" for the article. In our opinion, none of these rules would prove satisfactory either in theory or practice. The last two ((d) and (e)) would effectually eliminate all competition in price. The two that require the average cost of doing business ((b) and (c)) to be included in the selling price make no allowance for the very wide differences in selling costs that are found between articles in the same trade or industry. One article may require a good deal of handling or servicing. It may be bulky. It may require packaging or special wrapping, or delivery services. It may take up considerable space in the store. It may be a slow selling article. It may require advertising and selling effort. It may be sold on instalment payments, requiring the financing of the

unpaid balance of the price. Another article may be small and light in proportion to its value. It may require no packaging or wrapping or delivery service. It may have a very rapid turnover. It may be largely pre-sold by the manufacturer's advertising or by its own reputation. It may be sold only for cash. In the first set of circumstances a high markup over the dealer's delivered cost may be necessary to cover all the above costs or expenses of handling and selling. In the second set of circumstances a quite low markup may yield a quite satisfactory profit to the dealer. In the first set of circumstances a markup of 40% may not be sufficient. In the second a markup of less than 10% may be quite adequate. These wide variations in dealer's costs make any rule based on average business costs quite unrealistic.

A rule requiring in the dealer's selling price the inclusion of average costs of doing business ((b) and (c)) is subject to further objections. If the average cost in the particular trade (b) is applied, no allowance is possible for variations between individual dealers' costs of doing business. For one reason or another, e.g., location, lower rent, smaller staff, greater efficiency, one dealer's average costs may be substantially lower than another's. Is there any good reason why he should not be allowed, if he wishes to do so, to pass on to his customers some part or all of this advantage, thereby quite probably increasing his own sales volume and total profits? The rule, if applied strictly, would mean that all dealers in the trade would be required to sell all articles at the same minimum percentage markup. In the Commission's opinion, any such rule would be quite alien to the concept of a free competitive economy. Allowing certain special exceptions, e.g., for distress selling or end-of-season clearances, in no way obviates this fundamental objection in principle.

If the average costs of the particular dealer (c) are applied, price competition based on variations between individual dealers' costs is possible, but there is still the fundamental objection that the individual cannot make distinctions in markup based upon variations in his own costs of handling and selling different articles. As pointed out above, under certain conditions a 10% markup on one article may result in a satisfactory profit over and above the dealer's costs, while on another article, subject to other conditions, a markup of as much as 40% may not even cover the dealer's costs. Such a dealer's average costs (for all products handled by him) may well be equal to an average markup of 20% or more. The Commission can see no good reason why a dealer who can profitably sell a certain product at a markup of 10% should be required to sell it at a markup of 20%.

None of the evidence submitted to the Commission suggests that there is any trade in which it is customary for dealers to take the same markup on all products handled by them. There are many reasons for variations in markups in the same trade, and the Commission is confident that in practice (as would be expected in theory) one of those reasons is found in variations in the comparative costs of handling and

selling different products.

A rule requiring a fixed minimum percentage markup on delivered dealer costs would be very cumbersome and, in the Commission's opinion, would be impracticable. The cost of doing business varies as between individual dealers, and between different products handled by the same dealer, as mentioned above. It also varies between trades (cf., the grocery trade with the drug trade). It varies in the same trade from one period to another (cf., the grocery trade in 1954 with the same trade thirty years ago). In the Commission's view, to be in accord with competitive principles, any such minimum percentage markup must be low enough that no products can be handled profitably at a lower level. To be effective against loss-leading, it must be high enough to ensure that high cost articles sold at or above that markup do not result in a loss to the dealer. In short, in order to function effectively and competitively as required in the public interest, a minimum percentage markup must vary between different products, between different dealers, between different trades, and between the same trade at different periods. The problem of determining what the varying markup should be under all these multifarious circumstances does not lend itself to a practical solution. In addition there would be the problem of providing for necessary exceptions to afford flexibility from the viewpoint of internal management of a business and also from the viewpoint of meeting competition from other sellers whose costs or stock position may provide a basis for lower prices.

It seems clear that any minimum percentage markup established by law must, for the reasons just described, to a great degree be an arbitrary one. In so far as this is so, a rule involving such a markup is objectionable.

Referring again to the idea of "purpose", which is implied in the word "leader", clearly only oppressive or monopolistic purposes should be restrained by law. However, since dealers very seldom declare an illegal purpose, since price reductions often result from complex motives, and since a valid explanation can generally be alleged for them, there are obvious difficulties in the practical application of a definition of loss-leaders which includes an illegal purpose of which proof would be required. In any event, the Parliament of Canada has already dealt with this problem in Section 498A of the Criminal Code, the relevant portions of which read as follows:

> "498A. (1) Every person engaged in trade, commerce or industry is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding two years or to both, who
>
> . . .
>
> (b) engages in a policy of selling goods in any area of Canada

at prices lower than those exacted by such seller elsewhere in Canada, having or designed to have the effect of substantially lessening competition or eliminating a competitor in such part of Canada;

(c) engages in a policy of selling goods at prices unreasonably low, having or designed to have the effect of substantially lessening competition or eliminating a competitor.

. . ."

These provisions have been carried forward into the new Criminal Code, which comes into force on the 1st day of April, 1955, without material change. They are found in Section 412(1) of the new Code.

It is to be noted that the language of these sections includes within the offences both sales which have the effect of substantially lessening competition or eliminating a competitor, and sales designed to have that effect.

An attempt to secure an exact definition of loss-leaders is further complicated by the widespread and growing practices in certain trades of accepting "trade-ins" as part payment, and offering premiums and coupons to buyers.

In the end, the Commission has reached the conclusion that there are so many variables and qualifications expressed or implied in all the descriptions of loss-leaders which have been submitted in the inquiry that no one description could be abstracted which would be valid, even in theory, and that in any event such a definition would prove impractical if applied.

On the other hand, the primary practical function of this inquiry has been to ascertain what practices, alleged to be of the general nature of loss-leaders, exist in Canada, in what industries and with respect to what products and geographical areas they are found, how frequently they are employed, what portion of the trade in different industries is affected thereby, to what extent they are detrimental to the public interest, and what remedies, if any, are desirable. These practical questions may be pursued usefully without dependence upon a definition.

The two extremes of practices that have been described as loss-leading would appear to be the following:

(1) A practice of selling below cost for the purpose of destroying competition or eliminating competitors,

(2) Any sale below the established price or below the manufacturer's suggested list price.

With respect to (1) the Commission has no difficulty in concluding that any such practice would be monopolistic in character and clearly detrimental to the public interest.

With respect to (2) the Commission cannot agree that a sale constitutes a loss-leader or that it is detrimental to the public merely because it is made at a price lower than the established or manufacturer's suggested price.

Many selling devices or practices falling between the above two extremes were cited to the Commission (and previously to the Director of Investigation and Research) as constituting loss-leaders. The Commission has studied all such devices or practices and all representations concerning them in its search for answers to the practical questions outlined above.

3. Products Said to be Affected by Loss-Leader Selling

Some of the representations made to the Commission referred to this subject in the following terms: "There is abundant evidence at the present time of 'extreme forms of price-cutting' which are 'not compatible with the public interest'" (p. 49); "the abolition of price maintenance by the Government has thrown all lines of business into a most chaotic condition" (p. 2540); "conditions in retail trade are chaotic" (p. 2544); "there is ample evidence . . . of chaos in the retail trade" (p. 2644). On the other hand, the opinion of the Retail Merchants Association of Canada Inc. was that instances of loss-leader selling had been negligible from the time this inquiry was proposed and throughout the period of the Commission's hearings. The Co-operative Union of Canada said it was difficult to see that the present levels of loss-leader selling were very injurious. The Canadian Association of Consumers argued that most cases of loss-leader selling cited to the Commission did not involve predatory price-cutting but only a conflict between those retailers who chose to do business on low markups and rapid turnover, and those who could not or would not use the same system (p. 3906). Speaking of economic conditions which might influence selling practices Dean Grether said (p. 3290) that with the exception of conditions of deep depression when very little could be moved under any type of endeavour, the selling of merchandise below net acquisition cost involves a very insignificant amount of merchandise.

In the replies received to the Director's twelve-point questionnaire, the chief characteristics of goods commonly used as loss-leaders were said to be that they were either branded or staple articles of known value. The staple goods most commonly used in this fashion were goods that were purchased repeatedly by consumers and which were already low in price, making it easy to attract customers to them. The branded goods most commonly used as loss-leaders were those products which

had already achieved a position of widespread public acceptance, and which bore the best known brand-names, since with such goods price reductions would not mean to the public a cheapening of quality; goods also which were widely advertised and sold in large volume, and particularly those which bore the manufacturer's catalogue numbers, which made price comparisons a simple matter for shoppers. From the replies to the questionnaire, which numbered more than 100, it was apparent that the only fields in which loss-leader selling was felt to be significant were the grocery field and the electrical appliance field. In the representations made directly to the Commission, it was also apparent that loss-leader selling was felt to be most severe in those retailing fields which handled electrical appliances and grocery products, including cigarettes, though reference was made by some witnesses to other fields as well. In the replies to the twelve-point questionnaire, loss-leader selling was thought to be non-existent or at least not of any real consequence in the fields of dry goods, cotton and woollen knitted wear, men's wear, women's wear, full-fashioned hosiery and shoe retailing.

Electrical Appliances. With respect to appliances, the following articles among others were specifically mentioned during the hearings as having been used frequently as loss-leaders: electric kettles, irons, floor polishers, mixers, shavers, toasters, grills, and vacuum cleaners and also larger appliances, e.g., television sets, electric stoves, electric refrigerators and electric washers. Automatic clothes dryers, automatic dish-washers, and dispose-alls, were singled out by some witnesses as products in the appliance business on which there had been no loss-leader selling, because, as it was argued, they had not yet gained broad public acceptance (p. 915). It was the opinion of the Canadian Manufacturers' Association that the most comprehensive evidence of extreme forms of price-cutting was found in the appliance business (p. 71). The Canadian Association of Radio & Appliance Dealers (Victoria Branch) stated that almost every electrical appliance had been deeply price-cut in the past two years, and they referred particularly to General Electric kettles, irons and polishers, and to Sunbeam Mix-Masters (p. 2569). They submitted, however, that price-cutting had been general on certain smaller appliances and spasmodic on others (p. 2604). An appliance dealer in Toronto said that loss-leader selling existed in connection with all types of electrical appliances, from small articles such as kettles and irons, up to television sets, stoves and refrigerators (p. 766). An appliance dealer in St. Catharines said that the larger appliances were not being as deeply cut in price as the small ones. He contended that the public was misled by the advertising of large appliances into thinking it was getting substantial bargains from the dealer, whereas in fact the items advertised as bargains were goods of the previous year's model, on which the manufacturer had reduced his price to the dealer (p. 614).

The Canadian Electrical Manufacturers Association said that the electrical appliance industry presents problems differing from those

associated with the food, drug and tobacco fields, and which make it more vulnerable to loss-leader selling (p. 907). They stated that, for a product to be used successfully as a loss-leader, it must be standardized, have a wide public acceptance, and an established value in the mind of the public. Another important factor was that the catalogue numbers used by manufacturers to identify their appliances guaranteed to the public that no matter where a particular appliance was purchased, it would be identical in all respects. They further argued that because appliances were relatively high in price and were expected to give long service, customers were disposed to shop and compare prices before buying. Electrical appliances having these characteristics, they had been subjected to more loss-leader selling and unhealthy price-cutting than any other product (p. 913). Consequently the appliance industry had been more extensively damaged than any other industry by the ban on resale price maintenance (p. 933).

A dealer in Montreal stated that in recent times few businesses have been hit as hard as has the television and appliance line and that this was particularly surprising in view of the newness of television and its consumer appeal (p. 1598).

The Canadian General Electric Company Limited said that the cause of the loss-leading and excessive price-cutting which had been taking place on General Electric products was the ban on resale price maintenance (p. 802), that the General Electric Featherweight iron, the electric kettle and floor polisher had been widely advertised by retailers as loss-leaders for two years (p. 803), and that the floor polisher had probably been used as much as or more than any other article as a loss-leader (p. 810). This was also the view of an appliance dealer who said that because of the standards of quality and service offered by General Electric their products had been used more than any others as loss-leaders (p. 601). Among other instances cited in its brief, the Canadian General Electric Company Limited referred to a sale of G.E. floor polishers by a dealer in Toronto beginning on April 7, 1954. At this time the manufacturer's suggested retail price was \$54.50, the lowest suggested price to dealers in lots of three or more was \$35.43, while the price to wholesale distributors was \$30.25. The Toronto dealer whose sales of floor polishers had previously averaged one per day, advertised the G. E. product at \$33.85 for a period of three days. During these three days he sold 833 polishers, more than all the retailers in the metropolitan area of Toronto normally sold in a month. Of the 833 polishers, 629 were bought from the wholesale division of Canadian General Electric (p. 805). The circumstances surrounding this sale are described more fully in a later section of the report but it appears as a result of information secured from the manufacturer subsequently to the hearings, that the dealer initiated the special sale in connection with a promotion arrangement with the wholesale division of the manufacturer and thereby received a reduction in his over-all costs.

In the course of its hearings, the Commission received almost

no specific examples of products being sold below net acquisition cost. A large number of newspaper advertisements were filed with the Commission which showed a number of products, largely electrical appliances, being advertised at well below the manufacturer's suggested selling price to consumers and in a number of cases even below the manufacturer's suggested selling price to retailers, but in few cases was information given as to the retailer's actual buying price. Consequently, it is quite conceivable that, with most of the examples of loss-leader selling which were cited, the retailer in question made quite a satisfactory return even on the featured article quite apart from the effect of the selective price-cutting on the profitability of his business as a whole. In this connection a major difficulty which witnesses appearing before the Commission faced was that in many cases the manufacturer did not sell direct to the retailer who was considered to be selling goods as loss-leaders. In such cases it was difficult for the manufacturer to know from what distributor the retailer had bought and what price he had paid.

Although most of the submissions relating to the trade in electrical appliances tended to take a very serious view of the extent of loss-leader selling in this field, this was by no means the only opinion expressed. The B.C. Retail Hardware Association said that loss-leader selling was just beginning in Vancouver (p. 3047), and that the number of products which had been used as loss-leaders was limited. The Association felt, however, that the stores engaging in the practice were taking customers away from other stores because customers tended to purchase major appliances at the same store from which they obtained the bargains in the small or traffic lines. Wosk's Limited of Vancouver, which was regarded by other witnesses as the principal user of deep price-cuts in British Columbia, testified that in keeping with their policy that they would not be undersold, they met any price-cut made by other retailers but that they would discontinue selling an article rather than go below their costs in order to meet a cut price (p. 3158). They stated they had never sold below cost and defined this as the laid-down cost plus the handling cost of the particular article (p. 3163).

One of the largest retailers of electrical appliances in Toronto stated that it was seldom that articles were sold below laid-down cost (p. 654). It was suggested that while the company's selling prices on some featured products might appear to make them loss-leaders, actually no money was lost on them because the company bought in such large quantities. The company bought from a number of distributors, from some of whom it was able to get exceptionally low prices. If the company ran short of the featured article during the sale it might have to buy from another distributor at a higher price, but it was said that the cost of all articles in the sale would still be below the total retail receipts (p. 653). It was admitted by this retailer, however, that at least on one occasion when the company made a reduction to meet the price of another large volume store, some G.E. floor polishers were sold about $2.50 below actual cost (p. 650), although

even in the case of this product the average cost of all units sold was less than the average selling price (p. 654).

A large volume dealer in electrical appliances in Montreal expressed the opinion that there was not much loss-leader selling in the sense that retailers sold below their price from the wholesaler. This witness stated that he did not sell below cost unless forced to do so by the action of a manufacturer in announcing lower prices for replacement of goods similar to those which the retailer already had in stock (p. 1797).

The Retail Merchants Association of Canada Inc. said that the number of items which lent themselves to loss-leader selling was not large (p. 3556). With respect to the alleged loss-leader selling of larger appliances, the Association suggested that in many cases, if not in all, there was no actual selling below cost, and the problem was one of misleading advertising. The Association stated that in preparing its brief it had made a fairly extensive study of the appliance business and had examined a large number of newspaper advertisements of such products. Its conclusion was that there was no actual loss-leader selling of larger appliances, because retailers were making some markup on them. This situation, however, did not apply to small appliances.

It was indicated in the Green Book that during the summer months of 1953, the Director had received complaints from both retailers and manufacturers of household electrical appliances about the frequency and extent of price reductions at retail in this field. In an effort to obtain more precise information on this matter, a questionnaire was sent on September 8, 1953, to 174 retailers of electrical appliances located in large and small cities in Canada, including some dealers who advertised fairly extensively in the daily newspapers. Altogether returns were received covering 70 separate outlets, 45 of these being independent outlets, and 25 being multiple-unit outlets.

The questionnaire requested information, among other things, on the number of items sold below the manufacturer's suggested price, but above net purchase cost, and the number of items sold at or below net purchase cost, during the period June and July, 1953. Of the 70 separate outlets reporting, 51 indicated they had sold one or more items below the manufacturer's suggested selling price, but above net purchase cost. Many of these reported that all items had been sold at reduced prices. However, only 5 outlets reported selling 8 appliance items at less than net purchase cost, during the period under review. The number of units involved in these sales was not reported.

With respect to the hardware trade, representations made to the Commission as to the products affected by loss-leader selling fell into two categories. The Canadian Retail Hardware Association said that small electrical appliances had long been one of the staple products

in the retail hardware merchant's assembly and that these were frequently chosen for use as loss-leaders (p. 3654). Evidence was submitted to show the frequency of advertising of appliances at prices which were generally below the hardware retailer's cost, but there was nothing to indicate at what price the advertisers in each case had purchased the products featured. The other category of loss-leader said to affect the hardware trade was the offering by grocery retailers of standard lines of hardware at very low prices (p. 449), and the use by manufacturers of food items, detergents and other commodities of hardware goods as premiums (p. 449).

Sporting Goods. Representations were made to the Commission by the Canadian Sporting Goods and Cycle Association that retailers in this field were also affected by the loss-leader selling of electrical appliances. In addition, cases were reported of soft-balls (p. 557), fishing rods (p. 558), and fishing tackle boxes (p. 565) being sold below what was thought to be the advertiser's cost of acquisition.

Foods. Another major field in which loss-leader selling was said to be prevalent, both in representations made to the Commission and to the Director, was the food field. The following products were specifically mentioned as having been sold as loss-leaders: milk, ice cream, eggs, butter, margarine, tea, coffee, sugar, bread, fresh fruit, fresh vegetables, fresh and cured meat, canned meat, salad dressing, ketchup, canned corn, canned soups, jelly powder and soap flakes.

A joint presentation of the Retail Merchants' Association of Canada (Saskatchewan) Incorporated and the National Foods Division of The Retail Merchants Association of Canada Inc. stated that the Green Book revealed that loss-leader selling was more common in the food field than in other classifications of retailing (p. 2310). The selling of food products at prices less than actual invoice cost to the retailer was said to be fairly prevalent (p. 2411). On the other hand, Canada Safeway Limited contended that loss-leader selling in the grocery field in Western Canada was almost non-existent (p. 2833) and that "the proportion of items allegedly sold as loss-leaders is ridiculously low in comparison with the vast number of grocery items on the market today" (p. 2910). It was the view of the Saskatchewan Group, however, that the significance of loss-leader selling was not found in the number of items used but in what particular items were selected for the purpose, the total number of items handled by the store selling the loss-leader, the size and location of the store, and the impact of the advertising used in the promotion (p. 4138).

As in the case of electrical appliances, most of the specific examples of loss-leader selling in the food field, to which the Commission was referred by witnesses, suffered from indefiniteness in that there was little information on the prices at which the retailer, said to have been using the device of loss-leaders, bought the goods from his

supplier. The examples given in the food field raised additional problems. In connection with some of them there was a possibility that differences in quality existed. In the case of some sales of perishable goods which were given as examples of loss-leader selling, information was furnished by the vendor that the products were on the verge of spoiling. In the case of fresh meat, it was evident that there were further complexities, not encountered with manufactured products, connected with the apportionment of the cost of a carcass to individual retail cuts and the preference of consumers for particular cuts.

In the first inquiry sent out by the Director on November 4, 1952, to a broad cross-section of manufacturers, distributors, consumer and labour groups, information was invited on specific recent instances of loss-leader selling. Again in his follow-up letter of April 17, 1953, the Director said he would "also like, particularly, to be informed about as many actual cases of 'loss-leader' selling or similar practices as possible". In the replies received to these letters there were 45 relating to items sold in grocery stores. In each case, a request was sent to the company or individual who was said to have been selling the article as a loss-leader for information as to the date on which the product was purchased, the source, the net purchase cost of the product, and the number of days the price was in effect. Information obtained in regard to these articles indicated that in the 45 instances only eight involved sales below net purchase cost. Four items were sold in chain stores at an average reduction below net purchase cost of 10.5%, and four were sold in independent stores at an average reduction below net purchase cost of 29.4%. Of the remaining 37 grocery items, 34 were sold in chain stores and three in independent stores. Two of the 34 items sold in chain stores, were sold at net purchase cost, and the remainder at an average markup above net purchase cost of 7.4%. The three items sold in the independent stores carried an average markup above net purchase cost of 4.7%.

In view of the fact that the answers to the general questionnaire indicated that the grocery store field was one in which it was felt that loss-leaders were used frequently and were offered at large reductions below the regular price, a special questionnaire was sent out by the Director on June 11, 1953, to all grocery and combination (grocery and meat) chain stores in Canada, totalling 40 in number. Fifteen replies were received, ten from chain stores having a sales volume in 1952 of less than $2,000,000 each, and five from chain stores having a sales volume in 1952 of more than $70,000,000 each. Question 8 of the questionnaire related to the number of nationally advertised or standard brand articles sold at or below net purchase cost during the previous month. Three of the chains reported that they had sold one such item each. Eight chain stores reported no such items sold, and the remainder, all smaller chains, did not reply to the question. Question 9 related to the sale of private brand articles sold at or below net purchase cost during the previous month. One company reported that it had sold two such items, and ten others reported that no such sales had been made,

with the remainder, again smaller chains, not answering the question. Question 12 sought information on either standard or private brand articles sold below net purchase cost in 1952. One chain reported that two such items had been sold, four reported that no cases of sales below net purchase cost in 1952 could be discovered, and the ten small chains did not reply to this question. Question 13 sought information on the trend in the proportion of items sold below net purchase cost. One chain store reported that there had been no change in its proportion over the past five years, one reported that due to competition, there had been a tendency for it to increase the proportion of its sales made below net purchase cost, and one chain stated that it did not approve of selling below net purchase cost. In the questionnaire, fresh produce and meat were expressly excluded, because of the rapid changes which occur in the cost of such items and the questions of comparability of quality and condition.

As a further check on the prevalence of loss-leader selling in the food field, a survey was made by the Director's staff of newspaper advertising in the four largest Canadian cities, inserted by integrated chains, associated retail buying groups and other retailers during the month of January, 1953. Fresh meat and produce items were again excluded. Information available in the Director's files enabled a computation to be made for the period under consideration for each of the four cities, to determine average net buying prices. In the Toronto advertisements for January, four items were offered at or below the average net buying price. Three of the items were each reduced by a single advertiser, the remaining item was reduced by four advertisers. In the Montreal advertisements for the period, only two items were offered at or below the average net buying price, one of the items being offered by a single advertiser, and the other being offered by two. In the Winnipeg advertisements, only two items again were advertised at or below the average net buying price, and both were offered by the same firm. In the Vancouver advertisements, only one item was offered at or below the average net buying price, it being offered by only one advertiser.

Cigarettes. In the course of its hearings, the Commission heard a number of presentations which were devoted to the effects of loss-leader selling on the merchandising of cigarettes and tobacco products. The Retail Tobacco Association of the Province of Quebec, for example, stated that cigarettes were the outstanding target for price-cutting because they brought customers into the stores almost daily. It was said that no other trade faces such competition as does the retail tobacco trade (p. 1208). Benson & Hedges (Canada) Limited said that cigarettes, because of their wide general use, were ideal as loss-leaders (p. 1505). The question of the prevalence of loss-leader selling in the retailing of cigarettes is discussed more fully in a later chapter.

Bread. It was said by The National Council of The Baking Industry that bread was an ideal loss-leader because it had to be purchased frequently, was a standard product and had a well-known selling price (p. 142). The Council further contended that the baking industry had been afflicted for years with a loss-leader selling condition of a serious nature (p. 130). The brief referred particularly to the fact that chain stores in Ontario and Quebec had regularly sold their own private brands of bread at a price four cents lower than that available at independent stores or through bakers. Further reference is made to these submissions later in this report.

Drugs and Drug Store Items. Only one submission was made to the Commission by a representative of the drug trade. Drug Trading Company Limited, a co-operative buying organization for retail druggists, said that there was little to fear from loss-leader selling in the drug industry if it did not extend beyond its present level (p. 335) but that the drug trade was particularly vulnerable to the inroads of those outside the drug trade who might use drug items as loss-leaders in order to build up traffic in their stores. It was pointed out that only about 2% of the total sales volume of department stores consisted of nationally known drug products, whereas such products comprise about 54% of the average drug store's total sales volume (p. 337). Reference was made to the sale of Kleenex, Modess and Pablum by the food chains at less than the manufacturer's suggested prices and in some cases at little above the druggist's cost, and in one case it was said one of these products was sold by a food chain below the druggist's laid-down cost.

During the summer months of 1953, it came to the Director's attention that price reductions had been made on a wide range of items in drug stores in the city of Montreal. In part, to obtain additional information on the extent of these price reductions a questionnaire was sent out on August 31, 1953, to 180 retail druggists in the city of Montreal, 109 of which had advertised price reductions in the daily newspapers. Replies were received covering 77 drug stores, 57 of which reported that they had offered price reductions during the period covered by the questionnaire, that is, June and July, 1953. Question 7 related to items sold below net purchase cost. Seven of the 57 drug stores reporting reduced prices did not answer this question. Twenty-three stated that they did not sell any items below net purchase cost. Of the remaining 27, 20 offered fewer than ten items below net purchase cost, two offered 11 to 15 items, one offered 31 to 35 items, two offered 51 to 55 items and one offered 61 to 65 items below net purchase cost. As part of question 7, the drug stores were asked to list the five items sold at the largest percentage reduction below net purchase cost. Of the items thus reported the ten items showing the largest percentage reduction below net purchase cost were: Ayerst cod liver oil - 23.7%, Odorono Spray - 10.3%, Naphthalene - 6.3%, Gillette Blades - 3.1%, Absorbine Junior - 2.4%, Eno's Fruit Salts - 2.7%, Kola Astier - 2.0%, Optrex - 2.0%, Alphamettes - 1.8% and Kotex - 1.7%. With respect to

the cod liver oil, if the percentage reduction had been calculated on the basis of the most common net purchase cost reported, the item would not have appeared in this list because the most common net purchase cost was exactly the same as the price at which this item had been sold. A large majority of the stores reported that by September, 1953, they had ceased this low priced selling.

Other Products. Other products described in representations made to the Commission as being affected by loss-leader selling involved trade groups of smaller size than in the case of those products already discussed. The features of price reductions mentioned in the case of these minor products were along lines similar to those for the larger trades, although in the case of beauty preparations and hairdressing equipment the Allied Beauty Equipment Manufacturers' & Jobbers' Association pointed out that the products its members handled were not sold direct to the public, but were supplied to beauty salons and hairdressers for use in their operations. An entirely separate industry was reported to make the toilet goods and preparations which are purchased by retailers for sale to the general public. The Association submitted that the majority of their jobber members were exposed to "ruinous financial set-backs" caused by price-cutting and loss-leader selling (p. 1668). These practices were said to affect each of the major items for sale by the trade to beauty salons and hairdressers. The Association stated that with respect to beauty supplies, e.g., shampoos, loss-leader selling took the form of free goods, and with respect to equipment, e.g., hair dryers, it took the form of special discounts (p. 1692).

4. Areas in which it was Argued that Such Selling had Significant Effect

Views as to the localities or areas in which loss-leader selling was present to a significant extent were confined largely to the appliance, food and cigarette trades. It is perhaps not without significance that of the twenty-three parties who made representations to the Commission at its hearings and whose interests were limited to the provincial sphere, disregarding for the moment all national organizations and manufacturers who appeared, nine of the parties were concerned with the Ontario market, six with the Quebec market, six with the British Columbia market, one with the Saskatchewan market and one with the Alberta market. No one from Manitoba or the Maritime provinces indicated to the Commission a serious desire to make representations on the subject of loss-leader selling, although two companies whose places of business were in the Maritimes were associated with national associations in the presentation of their briefs.

The Canadian Manufacturers' Association expressed the view that loss-leader selling had created chaotic conditions in certain areas,

but the fear was expressed that under certain circumstances this condition might spread widely (p. 108). The limited nature, in a geographical sense, of the serious incidence of loss-leader selling was affirmed by nearly all those who appeared before the Commission who were interested in the electrical appliance business. It was the view of the Canadian Retail Hardware Association that while the present scale of loss-leader selling was serious, it was in an early stage of development and was most apparent in the most densely populated areas (p. 3667). A similar view was expressed by the Canadian Sporting Goods and Cycle Association, which stated that loss-leader selling was taking place in all localities but particularly in the larger centres, and that it was being used continuously in some areas and only intermittently in others (p. 550). It was suggested by an appliance dealer in Montreal that price-cutting dealers in the larger Canadian cities were "siphoning off millions of dollars in the T.V. and appliance business" (p. 1604). A large dealer in electrical appliances in Toronto stated that loss-leader selling was peculiar to the large metropolitan areas and was likely to remain so (p. 763). In making the same point that "rampant competition" at the retail level was spurred by a few large dealers in the metropolitan areas (p. 920), the Canadian Electrical Manufacturers Association argued that these were the only areas where sales on such a small margin could persist for any length of time (p. 981).

While there was thus general agreement that loss-leader selling in the appliance field was taking place largely in the metropolitan areas, a number of briefs pointed out that this did not mean that dealers elsewhere were not affected. On the contrary it was said by one witness that business all over Ontario was affected by prices advertised in the Toronto newspapers (p. 531). Another brief cited the circulation figures of the Toronto Daily Star and the Toronto Telegram in a number of cities in Ontario, and contended that the advertising of appliances at cut prices in the metropolitan areas in these papers damaged the businesses of retailers in cities and towns hundreds of miles away (p. 916). In connection with such advertising, one of the big volume dealers in Toronto stated that letters were received every day from all parts of Ontario from people who wanted to purchase products advertised at low prices in Toronto newspapers (p. 1023). Similarly in British Columbia, it was contended that the largest retailer of appliances in Vancouver, who advertised that he would ship small appliances to any point in British Columbia at a charge of 50¢, had greatly affected the business done by the dealers in the country areas (p. 2767). Several briefs made the point that the small retailer outside the metropolitan areas was adversely affected because regardless of how efficient he might be or how large a stock he might carry, he was still limited to the population of his own town or trading area and could not attract business from as large a market as that available to the advertiser of low prices in the metropolitan area (pp. 2656, 3084).

More specific opinions were given by a number of witnesses with regard to the geographical concentration of price-cutting on electrical appliances. The Northern Electric Company Limited stated that price-cutting practices of a predatory nature were most apparent in Ontario and British Columbia and more specifically in Toronto and Vancouver (p. 1530). A large retailer of appliances in Vancouver said that Toronto was the centre of price-cutting in Canada (p. 3132). Although the B.C. Retail Hardware Association suggested that loss-leader selling was just beginning in Vancouver (p. 3047), the Canadian General Electric Company Limited stated that while the Toronto market was the worst from the standpoint of the amount of advertising of price-cutting, the British Columbia market was the worst from the standpoint of damage done to the relations of Canadian General Electric Company Limited with its small appliance dealers (p. 829). A number of the briefs attempted to get at the problem of isolating the most severe price-cutting area by pointing to the effect on regional sales, on the hypothesis that total sales were adversely affected in the regions where price-cutting was widespread. This approach however was not very conclusive. For example, the Canadian Home Laundry Manufacturers' Association indicated that on washing machines, the worst price-cutting area was Toronto. It was said that Winnipeg was becoming a little more of a problem while in British Columbia price-cutting had not yet become a factor in this business (p. 1078). For the first four months of 1954 as compared with 1953, total sales of washing machines were reported to have dropped by 14% in Ontario, by 8% in Quebec, by 12% in the Maritimes, by 12% in Manitoba, by 14% in Saskatchewan, by 15% in Alberta, and to have increased by 9% in British Columbia.(1) The drop in the Prairies was attributed not to price-cutting but to the farmer's difficulty in getting cash for his crops (p. 1077). There appears to be no relationship between these variations and the areas in which price-cutting was asserted to be most significant. Also the figures do not provide any positive evidence as to the extent by which the volume of sales may be increased or decreased by price-cutting. In some of the submissions, some areas including the Maritimes and northern Saskatchewan, and the cities of Edmonton and Ottawa, were specifically mentioned as being relatively free of price-cutting of electrical appliances.

Little information was received with regard to the geographical concentration of price-cutting in the food field. The analysis made by the Director and already referred to, of advertisements of grocery products in Toronto, Montreal, Winnipeg and Vancouver did not reveal differences which could be regarded as significant. In their joint brief the National Foods Division of The Retail Merchants Association of

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(1) Dominion Bureau of Statistics figures for factory shipments of washing machines for the calendar year 1954, compared with the calendar year 1953, show an increase for British Columbia of 4%, and decreases for other areas as follows: Ontario 7%, Quebec 10%, Maritimes 15%, Prairies 21%.

Canada Inc. and the Retail Merchants' Association of Canada (Saskatchewan) Incorporated said that in Saskatchewan the main problems of loss-leader selling related to the food field (p. 2372). It was further stated that certain practices which were deceptive in nature and for which the term loss-leader selling was an over simplification were widely prevalent (p. 3977). On the other hand, Canada Safeway Limited stated that loss-leader selling in the grocery field was almost non-existent in Western Canada (p. 2833). It must be remembered that the Safeway company gave the term loss-leader a much more limited meaning than did the others referred to in this paragraph.

The National Council of the Baking Industry said that although the loss-leader selling of bread was worse in Ontario and Quebec than elsewhere in Canada, it was nevertheless a general condition (p. 234). Later in its submission however, this organization made the statement that there was no loss-leader selling of bread in the four Atlantic provinces where the prices in the independent grocery store and the chain store were the same (p. 235). It was further conceded that the price differential between bakers' bread and chain store bread existing in Western Canada might not reflect a loss-leader selling condition (p. 235). Reference was later made to the unfavourable operating results of bakeries in Canada and to the decline in the number of bakeries, as a measure of the extent of price-cutting affecting the baking industry. The fact that the operating results in the baking industry in the Maritimes, where there was no price-cutting, were no more favourable than in Ontario or Quebec was explained by the generally depressed economic conditions in the Maritime area (p. 237). The fact that there was a heavier proportionate decline in the number of bakers operating in Saskatchewan than in Ontario and Quebec, although the differential between the chain store and independent grocery store price was smaller in Saskatchewan, was explained by the relatively small number of bakeries operating in Saskatchewan. In the case of Quebec it was explained that the popularity of the French loaf, which cannot be produced so satisfactorily in large scale plants encouraged the survival of the independent baker (p. 169). It was said that in addition to the permanent condition of loss-leader selling arising out of the maintenance of the four cent differential in Ontario and Quebec between chain store brands and other brands of bread there were instances of spasmodic price-cutting in the principal cities in those provinces (p. 141).

With respect to the sale of cigarettes and tobacco products, the representations made to the Commission, the complaints made to the Director, and the further studies undertaken by him indicated that extensive price-cutting of cigarettes was regarded as a really serious problem only in Quebec, Ontario and British Columbia and, to a much lesser extent, Manitoba.(1)

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(1) Recently the Commission has received information that price-cutting of cigarettes at the wholesale level has developed in the Prairie Provinces.

5. Types of Outlets said to Practise Loss-Leader Selling

Dean Grether indicated to the Commission that there were a number of reasons in theory why the large retailer should be able to make the most effective use of the loss-leader tactic. In the first place he is better able financially to stand any loss. Secondly, he has a larger assembly of merchandise and has therefore a greater opportunity to attract customers to other products. Thirdly, the large retailer serving a metropolitan market is able to get full value from his newspaper advertising, whereas the small dealer, serving a local district, if he advertised in the same way, would waste much of his advertising dollar. Whether in a given situation however, a small dealer could use loss-leaders effectively or not, depended, in Dean Grether's view, upon the shrewdness of the dealer, his preference for using the technique, the location of his store, the type of commodity involved and the type of control over retailers exercised by manufacturers or distributors. It is perhaps a commonly held belief that the practice of loss-leader selling is indulged in by the largest and strongest retailing organizations. The evidence secured by the Director and that placed before the Commission by no means confirms this view.

Mention has already been made of the questionnaire sent by the Director in June and July, 1953, to dealers handling household electrical appliances. Completed questionnaires were returned by 44 independent retailers and 6 chain stores. The articles listed in the returns as having been reduced in price were refrigerators, washers, ranges, floor polishers, television sets, radios, irons, toasters and food mixers. The independent retailers reported they had sold 90 appliance items at less than the manufacturers' suggested prices at an average reduction of 22.4%. The chains reported selling 21 appliance items at an average reduction of 24.2%. The markup over cost of the items reduced in price was 20.5% in the case of the independent retailers and 25.1% in the case of the chain stores. This serves to emphasize the point that what may appear, to someone who does not know the purchase price, to be a sale at a very low markup may in fact yield a fairly substantial return.

The information secured by the Director in connection with the survey of price reductions by drug stores in Montreal during the summer months of 1953, previously described, does not provide any conclusive indication of the type of store most frequently using price reductions as a means of attracting trade. It will be recalled that 57 of the 77 drug stores replying, reported price reductions during the period. Average monthly sales in the period January to July, 1953, inclusive, for those stores which reduced prices (excluding one whose volume was so much greater than the rest that to include it would have given an average not representative of the group as a whole), were approximately $9,050 per store. Average monthly sales for the 13 drug

stores which reported no price reductions and which also reported their monthly sales volume were approximately $5,220. Again the conclusion that these figures tend to indicate that loss-leader selling is practised more commonly by larger retail organizations is scarcely borne out by the replies received by the Director to questions covering the number of items sold below net purchase cost. Seven of the group of 57 drug stores reporting that they had reduced prices did not reply to the question seeking information on sales below net purchase cost. Twenty-three said they had not sold any items in this category and one said only cigarettes had been sold below net purchase cost. Of the remaining twenty-six drug stores, one store with average annual sales of $82,000 reported selling between 51 and 55 items below the level specified, another drug store, which did not provide information on volume, sold the same number of items below net purchase cost. Two drug stores with average annual sales of $93,000 sold between 11 and 15 items below the level specified; one drug store with average annual sales of $100,000 sold between 61 and 65 items below this level and one drug store with the same volume sold between 31 and 35 items below net purchase cost. Twenty drug stores whose annual sales averaged $119,000 (the range being between $49,000 and $148,000) sold fewer than 10 items below net purchase cost. The results of the survey do not suggest there was any correlation between sales volume and the practice of selling below net purchase cost.

In few of the representations made to the Commission was it suggested that the largest retailing organizations, the chains, the department stores and the mail order houses, were primarily responsible for the degree of price-cutting about which concern was expressed. There were, however, some who took this view, notably the National Council of The Baking Industry, some of the organizations representing the retail and wholesale tobacco dealers, the Retail Merchants' Association of Canada (Saskatchewan) Incorporated, and the Independent Merchants Cooperative Association of Victoria, British Columbia. Only the general representations will be mentioned here as the particular situations in regard to bread and cigarettes are dealt with in a later chapter. It was the view of The Retail Merchants Association of Canada Inc. that while present levels of loss-leader selling were insignificant, there was a serious threat that in the future the chain and department stores would adopt the practice. On the other hand, it was the view of Professor Mund that in the United States the big chain organizations nowadays endeavour to engage in a reputable type of merchandising and do not want to sell below acquisition cost (p. 3203). Also the Canadian Sporting Goods and Cycle Association said that the loss-leader practice is engaged in mostly by independent retail merchants (p. 550) although this organization suggested that it was the larger business houses among the independent merchants who most commonly used the device. However, one of the larger independent retailers of electrical appliances in Montreal indicated that he believed it was not necessary to resort to loss-leader selling in order to get volume. He stated that, in fact, he had never sold any commodities

lower than the wholesale price (p. 1780). Also a large independent retailer in Windsor indicated that he had never sold appliances below acquisition cost, except when the manufacturer's selling price had been reduced on appliances which the firm already held in stock (p. 712). It was the view of the Canadian Association of Radio & Appliance Dealers (Victoria Branch) that, while all dealers decried the practice of loss-leader selling, it was indulged in by all, sometimes as instigators and sometimes as a matter of meeting competition, and this opinion received some support from a number of other witnesses (pp. 608, 2311).

In general it would appear that in the electrical appliance field, in regard to which there appeared to be the greatest concern by merchants and manufacturers, it was not the largest retailers, namely the department stores and mail order businesses which were regarded as the worst offenders in the matter of loss-leader selling, but rather it was a number of independent merchants in the larger centres who had built up their volume to an impressive size by featuring goods at low prices. Such advertised prices were frequently regarded by suppliers and competing merchants as a form of loss-leader selling.

The possibility of arriving at a satisfactory answer to this question is again hampered by the pervading difficulty of relating the representations of one group based on a particular definition of loss-leader selling to the representations of another group who use a significantly different definition of loss-leader.

6. Representations as to Trends in the Use of Practices Described to the Commission as Loss-Leader Selling

As on other aspects of the inquiry a wide diversity of opinion was expressed to the Commission on this subject. Some witnesses felt that there had been a great increase in the amount of loss-leader selling, but there was a considerable difference of opinion about when this trend began. Others felt that there had been a noticeable if temporary decline in loss-leader selling. Some witnesses, while differing on the question of how severe existing loss-leading conditions were, agreed that everything pointed to a substantial increase in this practice. A few witnesses suggested that sufficient information was not yet available to predict the future significance of the practice. A number of witnesses said that the problem had not reached significant proportions and that what was disturbing most business men was the fear of what might happen rather than the damage done by what had happened. Finally, representations were made to the Commission to the effect that while the practice of loss-leader selling may have increased there were self-correcting factors at work which removed the justification for government interference.

One association expressed the view that price-cutting conditions were worse at the present time than they had been for twenty or twenty-five years (p. 556). The National Council of The Baking Industry took exception to one of the findings of the MacQuarrie Committee in 1951 that "extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity" and expressed the view, as already indicated, that the baking industry had been affected for years by a loss-leader selling condition of a serious nature (p. 130). Another association, while taking a serious view of the present level of loss-leader selling, said that there had been little if any use made of the practice during the short supply period of the war and the immediate post-war period, and that there was not as much even now as there had been in the depression years before the war (p. 2364). A number of the briefs (pp. 802, 3018, 4304) gave as a reason for the increase in the practice of loss-leader selling the passage of Section 34 of the Combines Investigation Act, which prohibited resale price maintenance, and consequently argued that the growth of loss-leader selling dated from December, 1951. It was suggested in one brief that the reduction of the excise tax on electrical appliances in April, 1952, provided the occasion for the beginning of price-cutting and loss-leader selling (p. 817). It was the view of the B.C. Retail Hardware Association that loss-leader selling had reached substantial proportions only since the summer of 1953 (p. 3036).

Several submissions, including that of The Retail Merchants Association of Canada Inc., suggested that there had been a falling off in the practice of loss-leader selling (p. 3517), or that flagrant cases were less common (p. 4178), because of the fact that there was a government inquiry into the subject in progress. It was also the view of the Association that while instances of loss-leader selling had been negligible since the initiation of the inquiry by the Director and its continuance by the Commission, because the chain stores, department stores, mail order businesses and "discount organizations" feared the reaction of the general public to such practices, unless effective steps were taken to prevent loss-leader selling it would become as widespread as it was presently said to be in the United States (p. 3459). A significant factor in this connection was said to be the fact that so many organizations in Canada have parent companies in the United States who were only waiting for an appropriate time to introduce their merchandising policies here (p. 3518).

The Sunbeam Corporation also referred to the widespread price-cutting in the United States and said that while price-cutting in the sale of the Company's products had not yet reached such serious proportions in Canada (p. 1126), the situation, particularly in the Toronto area, was similar to that faced by the Company in 1950 in the District of Columbia, where there is no fair trade law, when the Company found the bulk of its business in the territory gradually shifting to the discount houses. This was said to be the first stage in the familiar experience of price-cutting in the United States (p. 1147).

Other witnesses referred to the increased lineage of advertising of electrical appliances (p. 913) and to the increase in the advertising of cut prices (p. 3658) and expressed the view that price-cutting was on the increase. Others suggested that, while the present level of loss-leader selling was serious, the practice was at an early stage of development, most apparent in the densely populated areas. It could be expected to become more widespread and its undesirable effects more intensified (pp. 1086, 1537, 3047, 3667). This point of view was supported by reference to the consideration that when business conditions are buoyant there is less incentive to resort to loss-leader selling and, conversely, when production and employment are declining the practice is likely to be used more widely (p. 2310), if only because in bad times merchants will go to great lengths in price-cutting if this is necessary to maintain their solvency (p. 2579). One witness, who saw some slackening in economic activity, expressed the opinion that the problem of loss-leader selling was much more likely to get worse than to improve of its own accord (p. 4223).

It was the view of The Radio-Television Manufacturers' Association of Canada that, because the manufacture of television receivers began in Canada only six years ago, and because volume production had come about only in the past two years, and further because conditions changed from time to time with the opening of more and more television broadcasting stations, nothing very conclusive in the way of statistical information was available about the prevalence of loss-leader selling in this field, or about what the future might hold (p. 1809). The British Columbia Division of the Retail Merchants' Association of Canada also expressed the view that the result of the price-cutting could not be predicted on the basis of what had occurred in 1953 and the first half of 1954 (p. 2794).

Some of the representations made to the Commission were in direct opposition to the view that loss-leader selling was already a serious problem and becoming worse. The Canadian Association of Consumers said that, while it was not in a position to say that some business people were not suffering real difficulties as a result of loss-leader selling or to evaluate the evidence placed before the Commission, it was inclined to believe that loss-leader selling practices in Canada were not very important (p. 3922). The Association went on to say that statements about loss-leaders appeared to have been made deliberately to exaggerate the problem (p. 1733). Instead of viewing the present level of price-cutting and loss-leader selling as a serious threat to the stability of particular trades or to the economy generally, the Consumers' Association said that the most frequent complaint the organization received from its members was that active price competition on lines which were formerly price-maintained was still merely "a whisper on the horizon" (p. 1742). Also, instead of regarding the alleged trend toward increased price-cutting as a matter of great concern, the Association asserted that, although the principle of price maintenance

had been outlawed, the practice was still widely effective on a voluntary basis, because many retailers had benefitted from resale price maintenance and consequently were not averse to accepting the suggested resale prices established by the manufacturer. Though it was realized that merchandising practices could not be changed overnight without damage to the distribution system, it was nevertheless the view of the Association that the legislation forbidding resale price maintenance would eventually have to be strengthened in order to introduce more flexibility into pricing at the retail level (p. 1758). The Association said that in some cases those appearing before the Commission appeared to be arguing on the basis of what they feared would happen rather than on what had happened (p. 3909). Several other witnesses also indicated that they did not think loss-leader selling had reached such levels as would justify any interference with the ban on resale price maintenance (pp. 2935, 3754). A large retailer of electrical appliances in Toronto expressed the opinion that there was nothing new about the practice of loss-leader selling, which had existed in the past under such names as fire sales, clearance sales, liquidation sales, etc. He said that despite the confusion which resulted from what was termed the splurge in loss-leader selling, it was nevertheless a minor evil of free enterprise (p. 769).

Some witnesses referred to trends of a different kind in the use of loss-leaders. It was said that prior to the ban on resale price maintenance loss-leaders were commonly articles which were not well known and in regard to which the consumer was inclined to question the quality or style, etc., so that the effect of the use of these products was of minor importance. However, since the prohibition of resale price maintenance, the loss-leader practice had become a much more serious problem, because brand name goods were now being used as loss-leaders, in which case the public knew without inspection that each would be the same regardless of where it was purchased (p. 545). Another change which it was suggested resulted from the ban on resale price maintenance had to do with the frequency and amount of trade-ins. At least in the metropolitan area of Toronto the practice of offering trade-ins had declined as customers became more responsive to the straight price appeal. One large electrical appliance dealer said that the trade-in principle no longer operated in Toronto and that at the present time the consumer in Toronto could buy just as cheaply without a trade-in as with one (pp. 789, 1030). In other areas it was suggested that trade-ins had become of greater importance in the retailing of electrical appliances than they were before the prohibition of resale price maintenance (p. 614). A further change suggested was the increase in the amount of advertising of price-cuts (p. 724), particularly in large daily newspapers. A number of the presentations referred to the consequence of such increased advertising. For example, the Commission was told that the present widespread use of comparative prices encouraged a tendency toward misrepresentation in advertising (p. 728). Other witnesses attached even greater importance to the increase in the

advertising of cut prices. Thus the Canadian Association of Radio & Appliance Dealers (Victoria Branch) which was greatly concerned about the damage alleged to flow from the practice of loss-leader selling, stated that it was the advertising of the price-cuts that did the most damage (p. 2599). The whole question of advertising in connection with loss-leader selling is considered more fully in a later chapter.

In a number of the submissions made to the Commission influences were mentioned which could be expected to retard the trend toward widespread loss-leader selling, and others which could be expected to check price-cutting practices not based on savings in distributive costs. The Canadian Association of Consumers said that reports received from all parts of the country indicated that in many cases the suggesting of resale prices by manufacturers seemed to have the same effect as the actual prescribing of resale prices (p. 1758). As indicated earlier, it was the view of the Association that many small dealers had grown up under the umbrella of resale price maintenance, and their interest in maintaining suggested prices was such a powerful factor in modifying price competition at the retail level that the Association felt the legislation banning resale price maintenance would have to be strengthened.

There was an inclination in some representations made to the Commission to divide price-cutting retailers into two categories, the first group being the larger commercial organizations of considerable financial strength, the second group being meagrely financed organizations, in business to make a quick killing out of new products or the pent-up demand from the period of shortages. In one presentation it was said that in two or three years' time the price-cutting situation existing at present in the television trade would redress itself, because the dealers who were deeply price-cutting would go bankrupt when the demand for television slackened (p. 1625).

Another element affecting the possible increase or decrease of price-cutting and loss-leader selling was also suggested by the Canadian Association of Consumers. It was the view of the Association that the only explanation of the lower prices offered by some price-cutting retailers was that they were obtaining more rapid turnover through volume selling or that they were being granted favoured prices by the manufacturer. The Association therefore suggested that the solution to the difficulties of competing retailers lay either with themselves in the matter of building up their volume, or with the manufacturer in the matter of discontinuing discriminatory prices to some dealers (pp. 1752, 1769).

The British Columbia Division of the Retail Merchants' Association of Canada said that changes in legislation such as the imposition of credit controls on the outbreak of the Korean war, their later relaxation, and the prohibition of resale price maintenance, had been important factors in upsetting normal merchandising practices

and initiating a period of deep price-cutting and loss-leader selling. It was the opinion of the Association that, in so far as the deep price-cutting and loss-leader selling were caused by changes in legislation, the disturbed trade conditions could be expected to settle down as retailers adjusted themselves to the new situation (p. 2738).

Another influence on retailers which tends to hold in check the use of deep price-cuts or loss-leaders is the knowledge of each retailer that a deep price-cut is likely to be met by one or another of his competitors. A number of witnesses before the Commission indicated that it was their policy to meet the price of a competitor, even if this necessitated price reductions to a point equal to or below their acquisition cost (pp. 2912, 3145). Canada Safeway Limited suggested that competition and not legislation was the best corrective for loss-leader selling, because retailers soon learned that, when loss-leader prices were met by competitors (p. 2912), there was little customer lure in loss-leader selling and that losses generally resulted from the practice. This Company also suggested that competing retailers had another effective weapon against real loss-leaders, by which was meant sales below acquisition cost, if they offered to buy from consumers, at the normal wholesale price, articles used as loss-leaders. It was argued that competing retailers would lose nothing in buying at their regular wholesale prices, while the store offering the loss-leader would suffer heavily in selling to customers for resale to the competing retailers. The Commission was told that this technique was a common practice in parts of the United States, but no information concerning its use in Canada was furnished to us (p. 2978).

The British Columbia Division of the Retail Merchants' Association of Canada suggested that "perhaps no other control upon market upheavals acts more surely or more steadily than a retailer's day-to-day efforts to find security" (p. 2633). By this was meant that the great majority of retailers are not large organizations and "when they buy they know they must buy cautiously, for their businesses cannot stand sudden inventory losses. When they sell they prefer to apply a reasonable profit across the board on a steady basis rather than to loss-lead on one article while making it up on another" (p. 2634). These views appear to confirm the opinion of Professor Mund, who said that the retailer is always under a natural compulsion to avoid loss-leader selling, since he has to recover his costs (p. 3174). He suggested that the retailer dare not make too large a reduction on one product, because in order to maintain the profitability of his business he would be under some compulsion to take a higher markup on other products, but if he should attempt to do so he would run into competition from other retailers (p. 3178).

While stressing the general practice of retailers to establish their selling prices in relation to their costs, the British Columbia Division of the Retail Merchants' Association of Canada stated that the featuring of one product by one retailer and other products by other

retailers resulted in minor battles between them which were the ordinary determinants of prices (p. 2638). In these circumstances they contended that the only retailers who had it within their power to stabilize rapid price fluctuations resulting from such spur of the moment competition were the national chain and department store organizations (p. 2639). That such organizations do occasionally lead prices upwards when they feel they have dropped too low was indicated in the presentation made by Canada Safeway Limited (p. 2961).

Other factors which were suggested as tending to limit the growth or reduce the prevalence of loss-leader selling were the probability that if the practice was used repeatedly the consumer would feel that he had been tricked into patronizing the store, and the technique would consequently lose its effectiveness (p. 3953), and the possibility that the systematic practice of loss-leader selling might be regarded as a policy of selling at low prices with the purpose or effect of eliminating a competitor, contrary to Section 498A(1)(c) of the Criminal Code (p. 2923).

CHAPTER III

EXAMINATION OF SOME FACTORS LEADING TO MORE COMPETITIVE PRICING

In the course of the inquiry it was evident that, though there was little consensus of opinion among witnesses appearing before the Commission about the prevalence of loss-leader selling, there was common ground about the fact of more competitive pricing at the retail level. In many representations to the Commission, both at hearings and by correspondence, responsibility for this change or at least for what were regarded as excesses of competition were attributed largely to the prohibition of resale price maintenance. Other submissions raised a number of other questions relating to increasingly competitive pricing at the retail level.

Some of the important factors leading to more competitive retail pricing will now be considered, because they have a direct bearing upon the lowering of prices and of distributive margins, which were regarded so frequently as synonymous with loss-leader selling.

1. Indications of Changing Pattern in the Distribution of Some Consumer Goods

(a) Increasing Role Played by Manufacturers in Creating Consumer Demand and in the Acceptance of Goods by the Public

The aspects stressed in the representations made in this connection were that the more confidence consumers have in the ability of a product to satisfy their wants, and the more of the functions of the distribution system performed by the manufacturer, the greater will be the temptation for some retailers to reduce the margins and prices which they now find more than adequate to meet their selling expenses, in order to increase the volume and profitability of their operations. The evidence placed before the Commission indicates that the trade in the electrical appliance business has been going through a period of adjustment, as a result of the change in the role of the manufacturer.

For a variety of reasons, it is clear that consumers in Canada now accept electrical appliances as customary articles of

household equipment or furnishings and no longer need convincing that electric ranges are convenient and practical, that vacuum cleaners and washing machines are time and labour saving devices which should not be looked upon as luxuries, that electric refrigerators offer convenience and a safeguard to health or that television and radio provide entertainment and pleasure within the reach of people of comparatively modest means. In addition to the fact that they enjoy higher levels of income, one of the reasons for this wider acceptance is that people have grown accustomed to the dependability of appliances generally. Reference was made by one witness (p. 939) to the difficulty of persuading consumers that they ought to purchase refrigerators in the days when these were first being introduced and when it was necessary to convince them that the compressor would not blow up, as sometimes it did. The durability of appliances is an allied factor in promoting public acceptance of these products. Consumer confidence in brand names is strengthened as a result of satisfaction derived from branded articles previously purchased. Guarantees by manufacturers also assist in creating greater confidence. Obviously when a product meets less sales resistance on the part of the customer, it can be handled on lower margins, and in a free market, someone is sure to supply the article at a reduced markup. A measure of the confidence consumers now have in electrical appliances is the extent to which price-cutting in the metropolitan areas was said to have affected sales elsewhere. It was reported by a number of witnesses that many appliances were sold outside the immediate market area on orders received by mail and telephone.

When, in addition to the fact that many electrical appliances enjoy much wider public acceptance than they formerly did, certain functions in their distribution which have generally been performed by the retailer, are being done to a greater degree by the manufacturer, the opportunity for some retailers to sell profitably to the consumer on smaller margins is increased. Looking first at the matters of servicing and guaranteeing of appliances, it is clear that manufacturers in this field have assumed a more direct responsibility to the consumer than is the case in many other lines. This is not to say that appliance retailers may not do more for their customers in the matter of service than do retailers of some other products, but rather that the manufacturer shares this responsibility with them more directly than is the case in many other fields of retail trade. In the first place, the manufacturer is directly involved in the warranty system under which the parts of the appliance are guaranteed by the manufacturer against defects over lengthy periods. This warranty system was originally introduced to promote consumer confidence in electrical appliances (pp. 931, 939). In addition, many manufacturers maintain service facilities, at least in the larger metropolitan areas in Canada, or enter into contracts with service companies, so that at the time the customer buys his appliance he may also buy the manufacturer's service policy, which thus relieves

the retailer of any responsibility in this connection (pp. 658, 680, 1024). Not only does the appliance manufacturer's activity in this matter reduce the retailer's responsibility and thus his cost of doing business directly, but it also greatly enhances public acceptance of the product. How much it means to public acceptance was indicated by one witness who said (p. 601) that the products of Canadian General Electric Company Limited were used more than any others as loss-leaders because of the high standards of quality and service offered by this Company.

In the promotion of the sale of electrical appliances by advertising the retailer receives very substantial assistance from the manufacturer. The national advertising alone which is done by manufacturers, is a powerful factor in making the retailer's selling job easier. In addition, many manufacturers in the industry have a co-operative advertising plan under which the dealer inserts an advertisement for products of a particular brand with his name prominently displayed and the manufacturer pays a portion, often 50%, of the cost of such advertising. This practice has been encouraged according to one witness (p. 1102) by the fact that it has been customary for years for a number of daily newspapers to require a manufacturer to contract to take a given amount of space during a year at the national advertising rate as a condition of the local dealer being granted the local rate for his advertising. Otherwise the local dealer is required to pay the national rate. The cumulative effect of all kinds of advertising of electrical appliances is obvious, and must certainly have reduced the selling problem for the retailer.

Another function in the distribution system ordinarily performed by the retailer is the demonstration and promotion of products he has to sell to whatever extent this is necessary to encourage public acceptance of the products. With new products excepted, the need for such demonstration appears to have declined in the electrical appliance field as the various types of products have been perfected by manufacturers and as the average consumer has become more accustomed to their use. Certainly the need for any demonstration by the retailer of the smaller appliances such as toasters, kettles, and irons, which were said to have been most affected by price-cutting, would appear to be slight indeed. Even with larger appliances, where the possible value of demonstration is more evident, the Canadian Association of Consumers said that many consumers were not influenced by dealer promotion, that the creation of demand was done by the manufacturer, and the retailer merely explained how the article worked (p. 1767). Another witness said that dealer demonstration mostly took the form of display, because whatever teaching was necessary was usually done in advertisements or in the book of instructions (p. 3222). A large appliance retailer in Montreal said (p. 1789) that very little demonstration was required at the point of sale, because of the large amounts spent on advertising

by manufacturers. He also referred to the fact that he had sold television sets, automatic washers and dryers over the telephone, indicating the high degree of public acceptance these newer appliances had already achieved.

With reference to new types of products, some witnesses said that dealer demonstration and promotion were essential to their introduction to the market (p. 1065) and suggested that price-cutting was discouraging needed promotion of new products such as automatic washers, automatic dryers, etc. That this was an over simplification of any difficulties being experienced in the sale of some types of new products was indicated in other submissions. It was pointed out that the public had not yet generally accepted dishwashers, because they required a lot of plumbing and were quite expensive, that until this year dryers had not been widely accepted, but that recent changes in the design of the product had made them more desirable, and that air conditioners which were not selling well two years ago, had now, as a result of increased advertising by manufacturers, reached such a degree of acceptance that they too could be sold by telephone (p. 1801). Further, it was suggested by a large retailer in Toronto (p. 683) that the manufacturer had to pave the way for public acceptance of new products and that dealer demonstration and effort did not add a great deal. In any case it was said the manufacturers themselves sometimes sent people out to demonstrate a new type of product on the retailer's premises. In the case of automatic washers another witness stated (p. 1783) that all installation, demonstration, service and guarantee are the responsibility of the factory representative, but it should be noted that he was speaking with particular reference to the metropolitan area of Montreal.

An example of the extensive assistance given by the manufacturer to the retailer in the introduction of new types of products was given by the Canadian General Electric Company Limited in the case of its electric floor polisher (p. 810). The importance of selling the first five or 10% of the people in the potential market and the effort necessary to convince them that they should buy the new product were stressed. Reference was made to the amount of research undertaken to develop the design of the new polisher, which included surveys of consumer reaction to three different makes of polishers already being manufactured, and which for this purpose were lent on a trial basis to over 200 people. After extensive model making, testing and redesigning, the polisher went into production, and, as one promotional step, between four and five thousand were sold at a loss to distributors and dealers for use in their own homes. Canadian General Electric then released several large newspaper and magazine advertisements across the country, and for one month had over 600 billboard advertisements, in English and French, across the country. The Company then organized about 1200 display and demonstration centres, in each case two-thirds of the cost being paid for by the retailer. Following this extensive

promotion by the manufacturer, the retailers displayed the product, called on prospective customers in their homes and demonstrated or loaned the polisher to prospective purchasers. The floor polisher was introduced in Canada in 1949. To whatever extent the early success in the sale of floor polishers might be credited to dealer demonstration and promotion, it would seem that such activity was of less importance by 1953, when a market survey conducted by Canadian General Electric Company Limited revealed that of 1,351 people who were contacted and who had bought floor polishers, 56% said that what brought the polisher to their attention and influenced them to buy, was the fact of a friend owning one (p. 890).

The combined effect of the advertising and other sales promotion done by the manufacturers, the dependability of the products, the guarantees provided and other factors, in the opinion of some witnesses is that most electrical appliances today are "pre-sold" as they were not five, ten or twenty years ago (pp. 1778, 1790, 2795, 2798), and that the retailer therefore has a less difficult task in making a sale. The fact that grocery supermarkets were going into the sale of appliances in the United States was referred to in this connection (p. 1790), although another witness thought that self-service, while possible on lines such as food-mixers which do not change from year to year, would not be appropriate for those lines which had yearly models and in the sale of which the manufacturer's advertising alone would not be sufficient. It is interesting to note in this regard that, in the report of the Super Market Institute in the United States 15% of 396 member companies, representing 3,500 stores, were shown as having handled electrical appliances in 1953 as compared with only 9% in 1952.[1]

(b) Increased Emphasis on Rapid Turnover and Volume Selling

Throughout its inquiry the Commission was impressed with the growing emphasis in Canada on volume selling at low mark-ups in certain lines of trade, and the extent to which some retailers whose businesses were being affected by this trend were inclined to identify this with loss-leader selling. The latter tendency was commented on by the Canadian Association of Consumers in their second submission to the Commission, at its final hearings. The Association stated that with perhaps one or two exceptions most of the instances of loss-leader selling cited to the Commission during its sittings did not involve predatory price-cutting, but only a conflict between those retailers who chose to do business on the basis of rapid turnover and small markups and those retailers who could not or would not use the same system (p. 3906). In urging that nothing be

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(1) Business Week, September 18, 1954.

done to restore a system of price maintenance as a means of controlling loss-leader selling, the Association said that it would result in an inevitable future partnership between consumers and "bootleg cut-price dealers", because the desire of consumers to get the most for their money could not be eliminated by law and the desire of individual retailers to conduct their business as they saw fit could not be wiped out merely by calling volume selling unfair. A similar view was taken by the Canadian Federation of Agriculture in suggesting that a new system of retailing might be developing, based on fewer dealers with larger volume and lower markups. In the long run it was said this would result in a wider distribution of many lines of goods at lower prices. This would not only bring gains for consumers but would also mean a larger volume of production and employment (p. 3948). The British Columbia Division of the Retail Merchants' Association of Canada argued that most drug stores, appliance and hardware stores and tobacconists required larger markups than self service supermarkets in handling the same products and similarly that discount houses need lower margins than traditional retailers of appliances who must provide for the cost of display space, heavy advertising costs, service, down town occupancy and a high proportion of salaries to selling costs. Supermarkets and discount houses in the view of this Association were natural developments in the field of selling. The same attitude was taken toward the appearance from time to time of innovations such as self-service, prepackaged merchandise, vending machines and other lower cost methods of doing business, which, it was felt, served to check the natural inclination of traditional retailers to add year by year to the services provided by their stores and to the markups on the goods they sold (p. 2629).

That there is partial recognition in the trade that the electrical appliance business in Canada may be in a state of transition caused by a striving for greater volume on lower margins, is suggested by an editorial appearing in the August, 1954, issue of the Radio, TV and Appliance Trade Builder which reads in part as follows:

> "Noticeable, too, of late is what may become another new trend in the business. It is beginning to look as though our industry might follow the pattern set by the food industry many years ago, when the first supermarkets came on the scene. These stores, some of them giant enterprises, operate largely on the appeal of minimum prices with practically no service. The customer gathers his purchases, passes through the turnstile, pays cash, and carries home his own groceries. Still operating, though, is the smaller independent grocer who delivers the goods, extends credit and gives services of many sorts to justify the somewhat higher prices he is compelled to charge. Will the radio, TV and appliance business settle to this pattern? Many industry leaders are beginning to think so

> and there is considerable evidence to support the belief. While the operation of the 'Supermarket' appliance dealer would not necessarily be as simple as that of the big grocery chains, all extra services could be sacrificed; much as now, in the case of some dealers, in the interests of greater turnover at lower prices. It is possible, therefore, that the public may find two types of dealers: Those who take a personal interest in their needs and problems and assume the responsibility for the satisfactory operation of the purchase, and those who offer merchandise at a lower price with the understanding that the customer is more or less on his own."

In the electrical appliance field, information about the operations of a number of large volume retailers was presented to the Commission bearing upon this question.

New Era Home Appliances Ltd. is a retailer of electrical appliances in Toronto. The Company handles major appliances for the most part, though smaller appliances, toasters, irons, etc. are also carried. For both classes of merchandise, all the items handled are nationally known brands. The Company began business in Toronto in 1945, with one employee in addition to the proprietor, and with no warehouse. At the time of the hearings the Company had 45 permanent employees and eight part-time employees. Its warehouse carried about 4,000 items (p. 640). It followed an aggressive selling policy and advertised extensively at low prices. Such advertising moved stock very quickly, an example being given of electric floor polishers, advertised in the Toronto Daily Star in the noon edition, with 100 of them being sold by four o'clock in the afternoon of the same day (p. 652). Its buying policy was to purchase large amounts of merchandise at the cheapest possible prices. Reference was made to television sets being bought in large quantities in the off-season, the late spring, when they could not be expected to sell readily, and being carried until the fall when they would sell rapidly. The Manager asserted that his Company used the same markup on cost on all products, which markup had recently been dropped from 20% to between 15% and 17%. The manufacturers' suggested selling prices would have yielded a markup on cost ranging from 33 1/3% to 50%. Gross sales from May 1, 1953, to May 1, 1954, amounted to $4,338,000 (p. 649), which he claimed to be the largest volume of business done by any single retailer of electrical appliances in Canada.

Another appliance retailer in Toronto, who did a substantial but smaller business than New Era, was Lawson Appliances. This firm had been in the electrical household appliance and furniture business for five years. It had over 9,000 square feet of show room space. Most of the lines handled were nationally advertised brands. Competition was said to be gradually forcing prices down and causing retailers to strive for a larger volume of business in order to maintain profits. It was the policy of Lawson Appliances to apply the

same markup on all appliances, and to reduce unit costs by selling in volume. Sales of small appliances had quadrupled in the past two years (p. 1022). Savings in handling costs were made where possible by selling goods in the original factory carton or crate, without unpacking. At the time of the hearings the markup on cost was about 17% (p. 1033).

In Windsor, Waddell's Sound and Radio Limited had been in the appliance, radio and television business for 18 years, during which time the premises of the Company had expanded very considerably. Currently about 50 people were employed and 13 service and delivery trucks were used in the business (p. 697). The total yearly volume of business done by the Company was said to be considerably over one million dollars. Nationally known lines were handled and buying was done in large quantities in order to obtain the lowest price. For example, television sets and refrigerators were bought by the carload (p. 699). The warehouse attached to the retail store could handle approximately seven carloads of merchandise. The example was given of the effect on volume of the sale of electrical floor polishers at low prices. In the eight months prior to July 1, 1953, the Company purchased 23 floor polishers for sale to the public. About this time the Company introduced a new policy on floor polishers, which also applied to electric kettles and irons, under which costs of handling were reduced by eliminating credit, delivery and salesmen's commissions on these items (p. 700). Mr. Waddell said that at this time, when the manufacturer's suggested retail price on these electric floor polishers was $54.95 and the cost price to the retailer was approximately $39.00, he ran an advertisement offering floor polishers at $44.95, or about 15% above cost. As a result of this advertisement, which cost the Company $24.00, 57 polishers were sold at a gross profit of $356.00 (p. 701). Following this policy, Waddell's Sound and Radio Limited purchased for sale to the public 1700 electric floor polishers (p. 700) in the period from July 1, 1953, to March 1, 1954.

The Music Bar Inc. is a retailer of electrical appliances which started business in Montreal in 1940, selling phonograph records. Because it was difficult to get appliances during the war, the Company did not enter the appliance business until 1945, in which year its sales of electrical appliances amounted to about $75,000. The Company's annual appliance sales volume remained at much the same level until the end of 1951, when the legislation prohibiting resale price maintenance came into effect. At that point the Company adopting a new selling policy, began to sell its appliances at a gross profit margin on selling price of about 18% (p. 1778), corresponding to a markup on cost of about 22%, instead of the much higher markups included in the manufacturers' suggested retail prices. The immediate result was that in 1952, the money value of its appliance sales multiplied by three, and the Manager stated in June, 1954, that the Company was doing an appliance business of half a million dollars a year (p. 1775). The Company could operate successfully

on this low markup because the products handled were nationally advertised standard items, largely pre-sold and therefore requiring very little sales effort by the retailer. Customers knew that all the goods were brand-new and packed in the original factory crates, and that in buying at this small store they would obtain precisely the same article as they would get at any of the large stores. Thus the Manager was able to say that he recalled one Friday evening when he had, himself, sold 17 television sets (p. 1779), and that his business had gone up from $100,000 a year to $500,000 without any increase in staff (p. 1778). No salesmen's commissions were paid, because the Manager did practically all the selling himself. There were no problems of inventory control, such as were found in larger organizations. In short, continued low overhead, combined with great increases in sales volume, enabled the Company to earn good profits on low markups.

At the time of the hearings in Vancouver, Wosk's Limited had four locations in the metropolitan area of the city and were considering the addition of two more. Of the total business done, 75% was in major appliances, 5% in small appliances and 20% in furniture. The Company began business in 1932. Volume was said to have increased approximately ten times in dollar value but in the interim this firm had developed from one store to four outlets. It was stated that Wosk's maintained service departments for all lines sold, including refrigerator service, stove service and TV technicians. The Company also followed a policy of delivering major appliances within a radius of 100 miles without making an extra charge. The over-all gross margin on sales realized by Wosk's was stated not to have varied very much during the period of rapid expansion. The percentage margin on sales was given as 28% in 1951, 24% in 1952, and 26% in 1953. The Company's operation, was based on quantity buying, which permitted it to sell at lower prices in order to attract more business. It was suggested that, since these quantity prices were not special deals and were open to anyone, three or four smaller retailers by combining their purchases could get the same prices from suppliers as Wosk's Limited (p. 3153).

Other witnesses gave further indications of a trend in the direction of volume selling at lower prices. Eddie Black Limited in Toronto said that the "cut-rate houses" had cost advantages which could be passed on to consumers in lower prices, arising out of reduced overhead by the elimination of the amount spent on display, by dealing on a cash-and-carry basis, and by buying in carload quantities (p. 776), the extra discount on quantity purchases these volume retailers were able to get sometimes equalling or even exceeding the normal margin of net profit of the ordinary retail outlet. The opinion was expressed that many electrical appliance dealers had lost sales because of their own insistence on keeping retail prices high, instead of passing on to consumers in lower prices some of the benefits of the greatly increased post-war volume and thus

attracting more business. It was suggested further that the volume retailers were here to stay, and that in order to compete with them the department stores and other dealers would have to find some way of cutting down their own distribution costs, because a change had been touched off in retailing which could not help but lower prices to Canadian consumers (p. 777). Eddie Black Limited had operated a traditional type of appliance retailing business until February, 1954, when an opportunity to expand the premises presented itself and the Company, deciding to accept what it regarded as the trend in merchandising, adopted the policy of selling on narrower margins, without reference to the manufacturers' suggested selling prices (p. 787). As a result of this change, the Company was doing a larger volume of business, enjoying more multiple sales even on such large items as refrigerators, stoves and washers, and the customer was getting his appliances at lower prices (pp. 788, 793).

The Canadian Electrical Manufacturers Association conceded that a few of the price-cutting retailers had achieved low operating expenses because they had succeeded in raising their sales volume to tremendous figures (p. 999). A member of the delegation representing the Canadian Retail Hardware Association indicated that in the more densely populated areas there was a definite move in the hardware trade towards the introduction of some form of self-service by streamlining retail operations after the supermarket pattern (p. 3737).

The same factor appears to be at work in the retail trade in the United States, as indicated by reports in numerous business publications and by certain representations made to the Commission. In an article entitled "Price Cutters Grab the Ball" in Business Week of April 3, 1954, the following comments were made:

> "Retailing is going through an upheaval that may prove as significant as that which produced the supermarket back in the 1930's. This current revolution in the marketplace, which affects appliances and hardgoods, has no name as yet. So far, it gets its identity from its chief symptom -- the discount house. It might be called the Discount Revolution . . . .
>
> At this stage of the game it is pretty hard to tell exactly what shape the future will take and what will finally become of the discount house . . . .
>
> One thing does seem certain, however: No matter what form the distribution of appliances and other hardgoods finally takes, the cost of distribution is due for a permanent readjustment -- downward . . . .

The readjustment has probably already taken place. In a survey of the country, Business Week reporters last week sampled the prices at which you can buy appliances at the present time.

The prices they were quoted followed an interesting and consistent pattern way below the 'suggested' prices. Here were the prices they were given in five cities on:

	Westinghouse Laundromat $	General Electric Vacuum Cleaner $	RCA 21-in. TV Set $
List Price	299.95	89.95	199.95
Columbus	245.00	65.00	170.00
Atlanta	230.00	62.40	176.85
Boston	240.00	63.00	175.00
Los Angeles	232.89	61.97	173.21
Nashville	240.00	72.00	170.00"

In the food field, the evidence presented to the Commission indicated a continuing trend toward greater self-service, though as is widely recognized, this is a trend which has been in progress for many years. Canada Safeway Limited described a number of factors which are typical of its type of operation in the food field and which had been responsible for lowering its costs of distribution. All stores were operated on a cash and carry basis, no deliveries were made to homes and no telephone or C.O.D. orders were taken by the stores (p. 2834). Years ago the Company had had a delivery service under which customers were charged 10¢ for a minimum order, but it was found that the delivery service was costing more than 10¢ per order and it had been discontinued (p. 2996).

Canada Safeway Limited claimed that there had been literally thousands of innovations and improvements in grocery retailing in recent years, the cumulative effect of which had been substantially to lower food distribution costs. Some of these improvements could be observed by shoppers but the largest proportion of them were said to have been in work methods and so-called back-stage operations. The following were given as examples of recent improvements: better refrigeration, handling and packaging had reduced spoilage; better planning of the stores meant that merchandise could be moved from the back store-room to the store shelves with a minimum of effort and waste steps; better designed shelves had been developed which were easier to stock as well as more convenient for customers; the introduction of order invoice forms with code numbers in place of cumbersome written reports facilitated the ordering of merchandise by store managers and had reduced the time necessary to make out orders from ten hours to two; better designed check-out stands, with scale, cash register and

check-out in proper relationship permitted a larger volume of merchandise to be handled in shorter time; the convenience and layout of stores had been improved and larger parking lots had been introduced and there had been a widespread changeover to self-service (p. 2886). The integration of warehousing and retailing operations had been the source of a great many economies which this Company stated were available to any other retailers who chose to operate in the same way (p. 2952).

A measure of the extent to which handling costs in the food industry were declining was given by Canada Safeway Limited in referring to the Company's average realized markup including cost of warehousing, as a percentage of sales, which markup was 24.5% in 1933, 18.8% in 1938 and for the Vancouver stores alone 15.7% in 1953 (p. 2888). The volume of business done naturally also afforded economies in enabling the Company to buy at the lowest possible prices. Although ordinarily a single independent retailer not integrated in any buying group would not be able to buy on the same basis as Canada Safeway Limited, it was possible that a very large independent retailer might do so. Other economies were derived from the integrated merchandising system in the promotion by Canada Safeway Limited of their own private brands. It was said that these could be sold at prices slightly lower than competitive national brands, because the supplier companies did not incur the expenses of salesmen on the road, of heavy advertising, etc. (p. 2993).

An analysis of the factors leading to the development of self-service in the United States was given by William Emory, Professor of Marketing, University of Florida, in a study entitled "Self-Service in Retailing"(1) from which the following extracts are taken:

> "While improved methods and techniques in retailing have developed tremendously in the last century, this progress has been largely overshadowed by the great strides made in manufacturing during the same period. However, within the last 20 years a major revolution has completely changed food retailing and now holds great promise of repeating its performance in other merchandise lines. This movement is self-service . . .
>
> The advent of self-service grocery retailing resulted from a mixture of economic, sociological, and technological developments. The immediate success factor in the early 1930's was primarily economic -- the strong appeal of drastic price reductions . . .

(1) Economic Leaflets, March, 1954.

Supermarket operators could sell for less because depressed business conditions and their large volume gave them a strong bargaining position. These buying advantages are often mistakenly suggested as the major sources of supermarket price savings. More important savings for the consumer come from lower store operating expenses. These economies largely result from the customers' assumption of many tasks ordinarily performed by the store and its personnel. This reduces the number of employees needed and enables all employees to be used more efficiently in routine stock work. Another cost saving comes from their cash-and-carry policy. This reduces the need for operating capital, and eliminates bad debt losses as well as costs of credit and delivery departments. Many savings come from the economies that result from the large scale of operation . . .

In spite of its economies it is doubtful if the supermarket could have developed as a permanent institution much earlier than it did. Before then it was customary to purchase meats and groceries at separate stores. Since few people had refrigerators before the 1930's, it was necessary to shop frequently for food. Until automobile ownership became widespread it was not likely that supermarkets could have attracted customers from an area wide enough to support such large stores. Population movement toward the suburbs in the larger cities was also fostered by the growth of auto ownership and furnished support for the supermarket movement. The development of brand recognition and packaging innovations were other factors. Not until manufacturers had developed strong brands could the consumer shop by self-service satisfactorily, and not until packaging methods and materials were developed could merchandise be profitably sold in this manner. . .

Since World War II, the conversion and expansion of both independent and chain supermarkets have been phenomenal. In the short four-year span from 1947 to 1951 there was a 57 per cent growth in the number of supermarkets in this country."

The Retail Merchants' Association of Canada (Saskatchewan) Incorporated, in its joint submission with the National Foods Division of The Retail Merchants Association of Canada Inc., expressed agreement with the view that no end was in sight in the trend toward the lowering of food handling costs (p. 4131) and conceded that the cost of doing business in the retail food trade might continue downward as efficiency improved, till in some cases it might even become less than 10% (p. 2418). A spokesman for this group, Mr. A. A. Shelly, provided the Commission with information about the operations of his own firm, Shelly Brothers of Saskatoon, which indicated that the trend toward lower margins in food retailing was not limited to the largest chain organizations. Shelly Brothers began business as food retailers and by 1928 had built up a chain of

36 units in the Saskatoon area. In 1933, the firm entered the wholesaling field by undertaking to supply 50 independent merchants on the same basis as the firm's own units. Shelly Brothers were now supplying 37 of their own units and over 100 independent retail stores (p. 4231). A number of factors which contributed economies to the operations of stores owned by the firm and also of associated stores were referred to. Each of the latter was required to place its total requirements with Shelly Brothers, which meant that accurate forecasts could be made in buying supplies, a steady volume would be assured the firm and large orders would be encouraged. There was no sales department and therefore reduced costs of selling at the wholesale level. The cost of maintaining a credit department and of credit losses was eliminated by the method of payment. Before each quarter, a set of cheques payable to Shelly Brothers was sent to each store for signing and return to Shelly Brothers. Weekly statements were then sent out to the associated stores showing in each case the amounts of the purchase orders and credit notes, if any, and the presigned cheques for the applicable week were filled out in the amount of the balance owing. For groceries, only weekly orders and delivery on the same day of the week for the particular store were encouraged, although produce was supplied more frequently. Deliveries were increasingly made by the firm's own trucks which avoided costly trans-shipments. Printed order invoice forms were used, which meant a saving of time for the grocer in ordering his requirements. Other factors were mentioned such as the introduction of a conveyor line in the warehouse and the making available to retailers of the services of a store engineer and a store consultant to assist in making more efficient the design and operation of stores.

That the growth in Canada of such organizations as that sponsored by Shelly Brothers has paralleled similar developments in the United States is indicated by an article in the New York Journal of Commerce of April 15, 1954, which reads in part:

> "The 'chain competition' bogey is being laid to rest in convincing fashion by progressive elements in the traditional wholesaler-retailer team in food distribution, known industrywise as 'the independents'.
>
> Adopting some of the costs-saving policies pioneered by mass distribution, and combining them with the advantages inherent in individual operation, aggressive wholesalers and retailers are scoring sharp sales increases by close teamwork.
>
> This is taking the form of affiliation with national or regional voluntary groups. In this set-up, the wholesaler functions along lines roughly comparable to the functions of the supply warehouse in the corporate chain field.
>
> Costs are pared, advertising, store engineering, accounting, and other functions are centered at 'headquarters', and a

> closely-knit marketing organization is the result . . .
>
> Initially, individual wholesalers merely organized 'buying associations' to obtain the competitive price advantages possible through large-quantity buying. Gradually, these groups began to perform auxiliary service functions for their members and their affiliated retail grocers, to aid them in combating chain competition."

An example of this type of development in Canada is the Independent Grocer's Alliance (I. G. A.). A statement describing the rapid growth of this organization, made by its President, was reported in the July, 1954, issue of The Retailer. He referred to the 400 I. G. A. retailers as the largest group of food stores in Canada, and proceeded:

> "I. G. A. sales in Canada have increased 100 per cent over 1953 and will top $125,000,000 by the end of 1954 . . . The tremendous progress made by I. G. A. Canadian grocers in the first six months of 1954 borders on the incredulous [sic]. They have shattered all records made in the 28 year-old history of I. G. A. by doubling their sales volume as compared to the same half year period in 1953 . . . Our Canadian retailers have quickly taken advantage of every opportunity available to them through their I. G. A. membership. They are enjoying the benefits of planned sales campaigns, effective advertising programs, top level promotions, and low prices that enable them to compete with any other food retailing organizations. And, most important of all, they have remained independent, free to conduct their businesses in any manner they choose."

A submission relating to the drug trade indicates that other fields of retailing have been affected by the same influences. Drug Trading Company Limited which is now owned by 1600 retail druggists across Canada was organized in 1904 to enable associated druggists to compete with the price-cutting then prevalent, by reducing purchase costs through group buying (p. 363). Later, to compete with the growth of the chain and department stores, a co-operative advertising plan was developed.

For this purpose, in 1932, a group of members of Drug Trading Company Limited formed the Independent Druggists Alliance. This group, now numbering about 475, has continued as a separate department of Drug Trading Company Limited, advertising co-operatively as the I. D. A. stores (p. 364). It was said that the volume of purchasing done by Drug Trading Company Limited enabled it to buy at prices as low as those available to any other distributor (p. 365). Drug stores which are not associated with Drug Trading Company Limited were also reported to have improved their buying position because, in order to retain business, other wholesale houses had to meet the prices of Drug Trading Company Limited.

(c) Effects Produced by Frequent Changes in Models in Some Lines

In the generally buoyant economy of the post-war period, except by reason of material shortages, there were few obstacles to the introduction of new products to the market and to the exploitation of new developments in the manufacture of existing products. Capital was readily available for new investment, development and research budgets were adequately financed, and the consumer enjoyed a high and rising level of income. In these circumstances it is not surprising that manufacturers of certain lines of consumer durable goods appear to have been constantly improving the design and operation of their products and frequently introducing new models incorporating these improvements. Also there seems to be little doubt that there has been a growing inclination on the part of manufacturers of some lines of consumer durables to turn to account the public interest in whatever is new, and to make the most of technical changes, by offering to the consumer yearly models of some products, particularly where seasonal factors affect demand. In the information placed before the Commission, this trend seemed to have been most marked in the field of major electrical appliances. The policy has of course been a feature for many years of the manufacture of automobiles. Such a policy, as reflected in style changes, has prevailed in the clothing industry for an even longer period of time. In the appliance business, one has only to compare the type of sales promotion applied to radios with that applied to television sets to see how marked the emphasis on yearly models and on style changes can be.[1] The two products of course are not comparable, in that technical innovations are now being made in the manufacture of television sets more rapidly than is the case with radios.

The introduction of new models, whether because of technical improvements or style changes, appears to be a factor of considerable importance leading to more competitive pricing at the retail level. It was pointed out in several presentations to the Commission (pp. 614, 3097) that frequent changes in models result in the manufacturer having more end-of-the-run lines to be disposed of as the production of a new model may begin before all stocks of the older model have been marketed. The manufacturer is consequently under pressure to clear these lines before introducing new models. As a matter of convenience in handling fewer orders, if not out of a desire to avoid disrupting the market over too wide an area, it appears from the information given to the Commission that the manufacturer, in addition to making a general reduction in the prices of models being discontinued, frequently, as the new buying season

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(1) N. B. In an earlier period model changes in radios were emphasized in much the same way as is now the case with television sets.

approaches, offers special prices on large quantities to a few dealers known to be able to move merchandise quickly. In such circumstances it is in the interest of the manufacturer that the suggested retail selling prices be departed from in order to clear the market for the new models, and evidence was given to the Commission that some manufacturers have acquiesced in or encouraged such price-cutting (pp. 615, 3097, 3820). The effect of these special prices is of course to place the dealer who buys in large quantities at a competitive advantage.

It is understandable in such circumstances that small retailers might be convinced that loss-leader selling was taking place, since they would not be aware that such special prices from the manufacturer were available to their competitors. The general price reductions often made by the manufacturer as the new selling season approaches also tend to improve the competitive position of the larger dealer. This is so because the small dealer cannot afford to finance or store end-of-the-year models in large quantities.

In addition to the pressure placed upon manufacturers to clear end-of-the-run lines, the frequent introduction of new models also exerts pressure on retailers and distributors to get rid of discontinued models, particularly where the difference between the old and the new is more than one of minor changes in style or when the manufacturer has reduced substantially the price of his remaining stocks of older models. As an example of the operation of this principle, one witness referred to the widely recognized intensity of competition in the automobile trade in the summer of 1954, when dealers offered free accessories, cash discounts and exaggerated trade-ins, because they were under pressure to clear their stocks with new models about to appear on the market (p. 3795). Similarly the successful introduction of new models of appliances would appear to depend to a considerable extent on the ability of retailers to dispose of their stocks of existing models. This emphasizes the function of flexible pricing at the retail level when the frequent introduction of new models is a feature of the trade, and may often result in what appears to be loss leader selling.

Another aspect of the matter is that the frequent introduction of new models will encourage consumers to purchase replacement articles sooner than they would otherwise. Presumably this is one of the main reasons for changing models frequently. It would seem therefore that the number of transactions which involve a trade-in is likely to rise. Consequently, because it is a simple matter for a retailer to change his prices by varying the amount allowed on the trade-in, this too will tend to preclude a stable pattern of net prices in the lines affected. How important the trade-in can become in the sale of some lines of electrical appliances was indicated by a retailer from Windsor, who said that in sales of television sets by his company, approximately eight out of ten transactions involved a trade-in (p. 709).

One witness who thought that misleading advertising rather than loss-leader selling was the principal cause of trouble in the appliance industry, said, in this connection, that a serious abuse was the false advertising of discontinued models as current models (p. 770). The Better Business Bureau of Ottawa and Hull Incorporated said that, in its experience, this practice was not used extensively but that it was sometimes indulged in when the store did not have the latest model (p. 3899). To the extent that misleading advertising of this kind is the cause of some of the difficulties facing appliance retailers, the frequent introduction of new models would obviously tend to aggravate the problem.

(d) Breaking Down of Some of the Traditional Distinctions Between Trades

Among the wholesalers and retailers who took the most serious view of loss-leader selling there appeared to be a common feeling that price-cutting by a merchant on lines which had not traditionally been sold in his trade, was particularly objectionable. This view was expressed particularly by some representatives of the tobacco, drug and hardware trades. It was explicitly argued that the lines used for this purpose by the new-comer in most cases constituted a far smaller proportion of his total business than in the case of the traditional handlers, and therefore price-cutting on these lines was likely to affect a far larger proportion of the latters' business.

Undoubtedly difficulties are created for some retailers in these circumstances. There are however other considerations, some of which were referred to by the British Columbia Division of The Retail Merchants' Association of Canada. It was the opinion of the Association that loss-leaders were particularly predatory when a merchant using them chose items which he did not normally stock (p. 2626) and the illustration of a jewellery store selling silk stockings was given. The Association suggested that if the goods were taken on in a regular way, no one should take exception to products having a high rate of turnover being sold in drug stores, supermarkets, tobacco stores or anywhere else (p. 2705). It was said that the ancient conception of strictly defined trade classifications was breaking down and the Association could not stand in the way of such a development even though it might be hard on some retailers who believed they had a vested right to trading in particular products (p. 2706). The economy of the country it was said, certainly did not suffer from methods of retailing which permitted products, formerly sold in stores dealing in virtually nothing else, to be brought to the consumer at lower prices, which still enabled the dealer to make a profit (p. 2708).

In submissions made about the alleged loss-leader selling of cigarettes it was said that the most vicious form of loss-leader practice occurred when a product unrelated to the real business of the store was selected for use as a loss-leader and that this could create ruinous competition for the retailer who depended on that product for his main business (p. 1208). If food chains wished to attract customers by price reductions, it was argued, they should cut the prices of such things as meat, fruit and vegetables rather than cigarettes, the sale of which was considered, in these representations, to belong to another trade (p. 2205). Although a comparable breakdown is not available for Canada, the following figures for the distribution of cigarettes in the United States, reported, in the Maritime Merchant of February, 1952, to have been compiled by the National Association of Tobacco Distributors, are illuminating. The total dollar volume of cigarettes sold in the United States in 1950, was given as $3, 870, 000, 000, and the following classes of retailers accounted for the percentages of the total indicated:

Independent Grocers	18.8%
Vending Machines	16.7
Chain Supermarkets	12.1
Cigar Stores & Stands	11.6
Independent Drug Stores	9.5
Restaurants, Bars & Liquor Stores	7.3
Military Canteens	5.4
Chain Drug Stores	4.3
Department & Variety Stores	2.2
Mail Order Houses	2.0
Hotel & Tourist Courts	1.4
Service Stations	0.9
All Other Outlets	7.8

Dean Grether has referred to this situation in one of his published studies,(1) in the following terms:

> "Tobacco products are on sale not only by dealers who are specialists in the general field but by a veritable horde of dealers far removed from the tobacco trade. All the varieties of department stores, super-markets, food chains, individual food stores, miscellaneous varieties of eating places, drug stores, confectionery stores, cosmetic and beauty stores, newsdealers, filling stations, mail order houses, country general stores, liquor stores, soft drink stands, amusement enterprises, etc., form a competitive maelstrom which constantly threatens the small core of tobacco specialists. It is amazing that even a

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(1) E. T. Grether, Price Control under Fair Trade Legislation, 1939, p. 155

small group which can be considered 'regular' or 'bona fide' still survives in the welter of competition."

Dean Grether's analysis suggests that it would be completely unrealistic to speak of cigarettes as "belonging" to a particular retail trade in the United States. That the situation in Canada is unlikely to be markedly different in this respect is indicated by a number of things. An estimate was quoted in 1938, in the report of an investigation into an alleged combine in the distribution of tobacco products, that there were about 60,000 retail outlets for tobacco products in Canada, or two out of every five retailers. The Green Book refers to the estimate made by one manufacturer that there are currently over 90,000 outlets for tobacco products in Canada or three out of every five retailers. According to the 1951 Census of Distribution there were only 2,330 tobacco stores and stands in the country, and their total retail sales, including non-tobacco products, amounted to 78 million dollars or considerably less than 25% of the 347 million dollars(1) worth of tobacco products produced for sale in Canada in 1951.

As was indicated earlier, the drug trade in one submission was said to be particularly vulnerable to inroads of a loss-leader character made by those outside the trade who might use some drug store items to build traffic in their stores. It was pointed out that drug products accounted for about 2% of the total sales of department stores, whereas nationally known lines of drug items accounted for 54% of the drug stores total volume (p. 337). Although Canada Safeway Limited, for example, said that there was a gradual increase in their sales of such items as tooth paste and related lines (p. 3003), it may be that this trend toward the addition of toilet goods and related lines by groceterias has not reached the same proportions in Canada as in the United States. In that country Professor Mund said it had been found that 85% of the country's supermarkets sold health and beauty preparations in 1951, as compared with only 37%, ten years before (p. 3234). With respect to hardware goods, representations were made to the effect that the sale of some articles of hardware by food chains at prices substantially below the recognized trade level gave the public the impression that other retailers were taking exorbitant profits (p. 338). It was said that grocery retailers were offering selected standard lines of hardware at very low prices to attract customers into the stores so that they might be sold other lines of merchandise (p. 449). It was argued that business was being diverted from hardware dealers in substantial volume (p. 1638).

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(1) Selling value at the factory. (The Tobacco and Tobacco Products Industries, Dominion Bureau of Statistics, 1951)

In a number of other submissions to the Commission (pp. 2443, 2515, 2641, 2646) complaints were made of manufacturers by-passing distributors or retailers, of wholesalers selling direct to the consumer and of other types of disruptions in the traditional pattern of distribution, but these were not described in sufficient detail to indicate whether they represented significant new developments, or whether they were departures from customary trade practices which are always present in greater or less degree.

2. Post-War Transition from a Sellers' to a Buyers' Market

(a) Saturation of the Market in the Case of Some Products

It seems clear from the views expressed to the Commission that a significant proportion of the increasingly competitive pricing existing at the retail level, at least in the sale of electrical appliances, is attributable to the fact that shortages have disappeared and a high and growing percentage of electrically equipped households are now supplied with these products. To the degree that retailers must depend for sales upon replacement of obsolete or worn-out articles, upon duplication of articles in the same households, upon the formation of new households and upon the extension of electrification, rather than upon meeting a backlog of demand, obviously there will be a greater incentive on the part of retailers to cut prices in order to widen their market.

Of particular interest in this connection are certain figures as to market supply and unequipped households compiled annually by the Radio, TV and Appliance Trade Builder, a trade journal. The general basis upon which the figures were compiled in each year is indicated by the introductory remarks in the issue of June, 1954, as follows:

> "Covering the calendar year of 1953, figures involving factory sales have been supplied by the Dominion Bureau of Statistics. Using this data as a basis, this publication has computed the list value of the merchandise, worked out the saturation for each appliance and carried forward the number of appliances in use after adding 1953 sales. In all cases obsolescence has been calculated as it is recognized that many old and worn out items go out of service every year.
>
> The percentage of annual sales that goes to replace appliances which go out of use was obtained through a dealer survey across Canada to determine what percentage of sales involve trade-ins, and what percentage of trade-ins are resold. In the case of smaller appliances dealers were asked to estimate

> what percentage of their year's sales replaced worn-out, discarded items. Averages were then worked out from the returns.
>
> The ever-increasing number of new homes always has a tendency to offset the saturation caused by purchases of appliances made during the year and 1953 was no exception. During the calendar year the number of electrical households in Canada increased from 3,222,300 to 3,319,139 absorbing a large proportion of the year's production."

The above extract indicates that, on the basis of previous sales and estimated rate of obsolescence of each appliance, the total number of each type of appliance in use has been calculated. Market saturation of each appliance, except for television and radio receivers, is assumed to be one unit for every electrically equipped household in Canada. Taking the total number of each type of appliance in use as a percentage of the total number of electrically equipped households gives a measure of saturation. The following table, showing the number of units of certain kinds of appliances sold in each year from 1950 to 1953, inclusive, and the percentages of market saturation, as defined above, has been prepared from the figures published in the June issues of Radio, TV and Appliance Trade Builder, for the years indicated:

Table 1. - Number of Certain Electrical Appliances Sold in Canada and Degree of Market Saturation, 1950-1953

	1950		1951		1952		1953	
	Total Sales	Percentage Saturation	Total Sales	Percentage Saturation	Total Sales	Percentage Saturation	Total Sales	Percentage Saturation
Irons	539,300	100.00	478,040	100.00	427,161	100.00	481.494	100.00
Radio Receivers (all types)	758,600	99.00	471,662	99.00	568,884	99.00	620,860	100.00
Toasters (incl. Sandwich Toasters)	355,000	94.5	247,440	96.3	196,743	97.3	305,141	98.4
Washers	280,521	65.7	218,620	69.6	250,760	73.8	276,461	76.9
Refrigerators	353,188	35.0	384,633	50.1	445,189	60.5	451,566	67.0
Vacuum Cleaners (all types)	224,300	51.4	193,405	55.0	198,796	59.2	219,106	61.7
Hot Plates and Grills	241,500	48.5	208,887	51.0	223,415	54.9	239,193	56.9
Ranges	151,615	26.6	118,335	28.6	149,403	30.9	176,455	33.2
Radio Receivers (motor car only)	128,900	25.5	122,803	29.7	104,035	25.6	182,561	30.0
Fans (portable)	175,797 (1)	25.1	95,790	26.2	45,640	26.8	112,841	28.4
Heating Pads	135,100	19.3	99,481	21.1	117,741	23.7	144,500	26.1
Percolators (not incl. Glass Coffee Makers)	41,800	10.0	21,176	10.2	17,121	10.5	33,182	10.8
Waffle Irons	58,621	6.3	30,626	6.9 (2)	27,025	7.8 (2)	36,062	8.6 (2)
Ironers	18,900	4.2	10,639	4.4	12,265	4.7	11,115	4.0
Television Receivers	29,600	--	39,185	--	137,236	--	366,496	--
Water Heaters (all types)	230,800	25.5	269,004	35.6	234,044	40.2	278,779	44.8

(For footnotes - see next page)

Footnotes to Table 1.

(1) Fans (all kinds).

(2) The percentages have been re-calculated from the figures in the original tables showing the total number of electrified homes with the appliance and the total number without, as the proportions given in the original tables did not correspond with the numbers shown.

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A number of footnotes appeared in the June, 1954, issue which are important in interpreting the significance of these figures. In the case of irons, while the percentage saturation was shown as 100, it was estimated that the total number of irons in use exceeded the total number of electrically equipped households. The explanation given was that many homes had more than one iron. Similarly in the case of radios, it was said that although the percentage saturation was calculated to be 100, the market for radios was still great because of replacement sales and sales of second and third receivers in the same home. Estimates of market saturation for radios were based on an estimated total number of Canadian families of 3,483,700 or 4.3 persons per family instead of on the total number of electrified households. This was necessary in order to provide for battery models of radios. In the case of motor car radios the estimates were based on passenger car registrations of 2,500,000. For the television receivers market, saturation would mean one receiver for every household within receiving radius of a television broadcasting station. It was therefore pointed out that market saturation of television was continuously variable because of the frequent opening of new stations. For this reason no attempt was made to estimate the market saturation for Canada as a whole. Import and export figures were not available for the small appliances, so that the figures shown for percolators, fans, toasters, waffle irons, irons and heating pads were based on Canadian sales only.

A considerable number of briefs presented to the Commission referred to the changed situation created for retailers by the growing easiness of supply and the increased saturation of the market in the sale of some electrical appliances. One dealer who began business in 1945 said that during the firm's first four years of operation, they were simply order takers. Beginning about 1950, some competition became evident and more selling effort was required. Subsequently the electrical appliance business had become progressively more competitive up to the time of the hearings. It was suggested that the saturation point was being reached on some products and, while more articles were available, there were fewer customers (p. 645). The example of refrigerators was given and it was said that people who owned models which were only five or six years old, knew that they would operate satisfactorily for another

ten years, and would only trade in their old refrigerators if they were able to make a good bargain. This dealer also referred to the extent to which consumers were now shopping around, by citing a survey of the firm's own customers, made by asking every fifth or tenth customer how many stores he had previously visited in shopping for the article in which he was interested. He discovered that customers had sometimes been to as many as twelve stores, which indicated that no dealer could confidently expect to sell to a customer if his was the first store visited (p. 644).

Another dealer said that there was a sellers' market prior to the abolition of resale price maintenance but that a buyers' market had since appeared. He referred to the fact that in his store eight out of ten sales of television sets involved trade-ins (p. 709). A large dealer in Vancouver said that, excluding television, trade-ins were taken on about half the total volume of business done (p. 3133). It was the view of yet another dealer that customers today shop before buying, and that for several years price has been the biggest factor in moving merchandise (p. 1026). These expressions of dealer opinion received some confirmation from the statement of the Canadian Retail Hardware Association that well known brands of appliances, if taken care of, would last indefinitely and would not require much replacement, and partly as a consequence, the saturation point would appear to have been reached for certain traffic appliances (p. 3716).

Submissions made on behalf of manufacturers afforded further support for some of these views. The Canadian Electrical Manufacturers Association said that the saturation point had been reached in the sale of some kinds of appliances and consumers were therefore demanding substantial trade-in allowances. At the same time the Association contended that the prices established by the price-cutting dealers did not allow any margin for trade-ins and consequently the regular dealer either lost money on trade-ins or lost sales by refusing them (p. 928). It was argued by the Canadian Home Laundry Manufacturers' Association that prior to the prohibition of resale price maintenance there were shortages in a number of lines, though not in the case of washing machines, and the result was that prices were comparatively high and were generally maintained, as they would not have been if there had been an ample supply of all merchandise (p. 1085).

Some witnesses outside the trade took a similar view. One said that Canadian industry today was at the crossroads, with supply steadily outgrowing demand (p. 3767). The opinion was expressed that the price-cutting condition which the Commission was called upon to investigate was due not to the absence of a law controlling prices, but rather to keen competition (p. 3793). The Canadian Association of Consumers suggested that many of the briefs presented to the Commission had outlined very real and often painful problems which were besetting the retail trade, because it was

moving out of an extended and comparatively easy sellers' market into a more normal but more difficult buyers' market (p. 3904). It was said that the major problem presently facing trade and industry was simply competition in either open or subtle forms, and it was suggested that most of the complaints which the Commission had heard were mainly pleas for a limitation of the more painful aspects of this competition (p. 3905).

Problems of much the same character have been encountered by industry and trade in the United States and the National City Bank in its monthly letter of January, 1955, referred to "The Myth of 'Saturation'". The following extracts are taken from this article:

> "At the beginning of the year many feared that markets for consumer durable goods and housing were saturated. Since the war vast numbers of homes, cars, appliances, and other durable goods have been built and sold. Consumers have satisfied their most pressing wants. Yet families showed in 1954 that they are ready and willing to buy the products they find attractive.
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> . . .
>
> This experience shows that, in a period of sustained spending power and high liquid asset holdings like the present, families tend to up-grade their wants rather than to become 'saturated'.
>
> . . .
>
> The other side of the coin is that today's markets are buyers' markets. To an every-increasing extent, consumers nowadays can postpone satisfaction of their wants if nothing attractive is offered to them. Styling, quality, new features are more important than ever, and so is price."

Although sales of some lines of consumer durable goods have declined in Canada, as they have in the United States, from peaks reached as accumulated demands were being overtaken it is evident that the sales of goods, even in those lines the markets for which are classed as largely saturated, show that the wants of consumers do not remain fixed. As pointed out in the articles in Radio, TV and Appliance Builder, previously quoted, the continued increase on a substantial scale in the number of new homes is also a very important factor in maintaining demand for household appliances.

(b) Over-Production and Means Employed by Manufacturers to Clear Stocks

The question whether or not there has in fact been over-production of certain lines of goods, is one which does not lend itself, except in extreme cases, to testing by statistical measures. However, opinions expressed to the Commission on this subject were such as to suggest the conclusion that in some lines of electrical appliances at least, a considerable amount of the price-cutting complained of was the result of temporary over-production. To begin with, a number of references were made to the highly competitive structure of the Canadian electrical appliance manufacturing industry. In several briefs it was argued that the appliance manufacturing industry was overcrowded (pp. 645, 767). In support of this view it was said that there was some 30 manufacturers of appliances in Canada as compared with some 35 manufacturers in the United States, where the market was so much larger(1). It was also pointed out that in addition to the production available from the large number of domestic manufacturers substantial proportions of some electrical appliances supplied to the Canadian market were imported (p. 768). The Canadian Electrical Manufacturers Association further emphasized the keen competition among domestic producers, pointing out that the considerable former export market in appliances had shrunk to practically nothing, yet there were still 31 Canadian manufacturers engaged in the production of electric ranges and 16 in the production of rangettes. It was said that the greatest number of ranges and the greatest number of refrigerators ever produced in Canada could have been made by the existing productive facilities of the three largest domestic manufacturers (p. 919). One member of the delegation representing the Association said that while there had been some over-production of electric ranges there had been a great deal of over-production in refrigerators (p. 974). Another witness who blamed the extensive price-cutting of appliances on the abolition of resale price maintenance also expressed the opinion that there had been very great over-production of appliances (p. 1615). It was said by another witness that some of the deepest price-cuts were not due to the fact that resale price maintenance was no longer legal but to the fact that there had been over-production in some lines. What with this fact and the introduction of new models, the market situation resulted in price-cuts, the deepest of which may have been made with the co-operation of the manufacturer (p. 3097). Also, it was the opinion of the Canadian Wholesale Hardware Association that the over-production of appliances and power mowers had created chaos in the distribution of these products in the early months of each of the past two years (p. 1643).

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(1) The figures referred to by the witness must relate only to a section of the industry in the United States since, according to the 1947 census of manufactures, the number of companies engaged in the manufacture of electrical appliances in the United States was far greater than the total given.

While the weight of opinion presented to the Commission followed similar lines, a few contrary views were also expressed. The Radio-Television Manufacturers' Association of Canada, for example, said it had nothing with which to rebut the suggestion that some of the dealers' difficulties had been due to over-production by the manufacturers, except to say that there had been no over-production of television receivers in 1953 (p. 1834).

By way of explanation of some of the recent difficulties facing retailers, some delegations attempted to distinguish between the manner in which manufacturers had handled the problem of over-production prior to the abolition of resale price maintenance and the manner in which it had been handled subsequently. The Canadian Sporting Goods and Cycle Association, for example, said that in the past when a manufacturer was faced with the problem of over-production he offered an extra discount to all dealers in order to move the surplus. It was argued that the prohibition of resale price maintenance has permitted a situation to become prevalent, in which a large retailer will approach a manufacturer who has a stock of slow-moving goods, offering a lump price for the entire lot. The Canadian Electrical Manufacturers Association said that in the past it had been possible to correct an inventory situation arising out of over-production without disturbing the trade. By way of contrast with current practices, this had been done by the manufacturer selling at special prices to retailers who in turn made "special deals" with individual customers, but did not use the form of promotion now employed by large scale sellers who feature the reduced prices in full page advertisements (p. 976). On the other hand, one volume retailer argued that prior to the ban on resale price maintenance, manufacturers favoured one or two of the larger dealers, to whom they gave special prices, and through whom they unloaded surplus stocks (p. 1026). It was claimed that time after time, the firm encountered situations in which they had to compete with favoured dealers who had been given "special deals" (p. 1027). It was contended that these dealers then followed the practice of offering exaggerated trade-ins to customers, but that if the small or average dealer attempted to do the same thing he was severely reprimanded by the manufacturer (p. 1028).

A number of submissions to the Commission represented that price-cutting by the manufacturers themselves, as a result of over-production, had contributed more uncertainty to the sale of appliances than the activity of the "discount houses" (p. 1789). It was suggested that whenever manufacturers had over-produced or had stocks of older models on hand when new ones were introduced, they would encourage price-cutting in order to stimulate buying by the public (p. 3820). Two policies were said to be followed by manufacturers in making such sales. Under one the manufacturer reduced prices to all dealers and under the other he attempted to dispose of his surplus through selected low-margin retailers. It was suggested by one witness (p. 677) that as a rule the manufacturer in clearing over-stocked lines would inform all his dealers that these lines of merchandise were available at lower prices. However, if his stocks on hand of a particular item were relatively limited he

might select one dealer only, to whom he would offer a special price. Another witness said that where a manufacturer had only a few carloads of major appliances to clear, he quite commonly made a "deal" with one or two retailers and raised no objection to departures from the list price (p.3157). A number of examples of the upsetting effects of general price reductions by manufacturers were referred to (p. 1062) but such disturbances were apparently not regarded too seriously by retailers. In some cases it was indicated that the regular quantity discounts available from manufacturers were not very great. An example was given of a difference of about twenty dollars in the manufacturer's unit price on the purchase of large appliances in lots of fifty as compared with the purchase of a single article (p. 1798). A difference on this scale is, of course, significant if sales are being made on a narrow margin. If the range of discounts is small there is less incentive for a dealer to order in very large quantities. However, another witness said that the additional discounts available to purchasers on a carload basis were sometimes equal to or in excess of the normal margin of profit of the ordinary retail outlet buying in minimum quantities (p. 776).

The case of special prices given to selected dealers was generally regarded as a very different matter. The evidence indicates that the initiative in transactions involving "special deals" sometimes lay with the dealer and sometimes with the manufacturer. One witness stated that frequently he was able to find out when a manufacturer was loaded with surplus appliances and was able to drive a hard bargain, because he knew the manufacturer had to dispose of his merchandise (p. 674).

This witness suggested that so long as the dealer was able to handle a large quantity of merchandise, he could get an extremely good price from the manufacturer. The price was sometimes so low that the manufacturer claimed he was losing money on the transaction (p. 674). It was said by another witness that one reason for price-cutting on electrical appliances was that the manufacturers had over-produced and had then sought to get rid of their surplus stocks by offering special quantity discounts to big dealers (p. 3820). Examples of "special deals" were referred to by different witnesses where the initiative had been taken by the manufacturer. A 1954, 21-inch television set was mentioned which was originally priced at \$349.95, but which was currently selling at \$199.95 with base and service warranty extra at about \$39, as a manufacturer promoted sale (p. 716). Another instance given was that of a manufacturer offering an article fo to certain competitors of a retailer who had earlier bought the same model for \$265.00 (p. 1789).

Clearance sales of this kind, as pointed out by one witness, enabled the manufacturer to move large quantities of inventory with the least delay (p. 777). That this view is widely held by retailers was indicated in a number of articles in trade journals to which the Commission was referred. It was also

evident in quotations from dealer correspondence which the Small Appliance Department of the Canadian General Electric Company Limited included in its brief. These indicated that many of the Company's dealers thought either that the manufacturer was encouraging price-cutting or that some dealers must be getting special low wholesale prices in order to sell at retail at great reductions. (N.B. Canadian General Electric Company Limited maintained that in fact, sofar as that Company was concerned, the exact opposite was true.)

It was clear from the evidence presented to the Commission that not only were such special prices available on many occasions from manufacturers, but they were also available from jobbers (pp. 866, 3677). Information given by some retailers suggests that special price concessions may have been more readily available from the jobbers. One witness stated that the retailer did not get the same "deals" on larger appliances as he could on smaller ones, which were presumably purchased from jobbers (p. 3157). In a number of cases alleged by manufacturers to represent loss-leader selling, closer examination of these situations revealed that the retailers in question were receiving price concessions from wholesale distributors.

In addition to commenting on the methods employed by manufacturers to dispose of surplus inventories, a number of witnesses referred to the general question of price discrimination (pp. 2473, 2659, 3171, 4135). For example, one complaint was that the small dealer was at a competitive disadvantage in the sale of sporting goods or appliances because of the buying advantage enjoyed by the department store (p. 561). In this instance it was conceded that to some extent the lower price to the department store was justifiable on the basis of cost savings to the manufacturer. In most cases the possibility of such savings was not mentioned as a factor in the price difference. However it is not difficult to see how a situation which arose from price discrimination, the nature of which was not known to a competitor, might be confused with the existence of loss-leader selling.

(c) Post-War Influx of Traders

It was brought to the attention of the Commission that there had been a considerable increase since the war in the number of retailers handling some lines of goods which were particularly affected by price-cutting. In some quarters it seemed to be the opinion that this increase was responsible for a significant amount of the price-cutting particularly in the sale of electrical appliances. This was evident, not only in the statements of some witnesses, but also in trade publications to which the Commission was referred.

The following extracts are taken from an article in the July 18, 1953, issue of Hardware and Metal:

"Premiums, Trade-Ins and price cutting are such familiar features of appliance retailing that it might seem unnecessary to bring up the subject again but from a recent survey conducted among dealers across the country it appears that there has been a change of opinion as to the causes of the chaotic conditions prevailing in the trade. Not so long ago the government's repeal of resale price maintenance was generally considered to be at the root of the trouble; this was the tone of the tenth annual convention of the Ontario Association of Radio, Television and Appliance Dealers held in Toronto, April 12-15. In reply to a Hardware and Metal questionnaire little or no reference is made to resale price maintenance, the consensus being that, if anything, manufacturers, for one or another reason, must accept the main responsibility for the retail trade's plight.

Too Many Dealers

Every appliance dealer, or hardware retailer selling appliances, who responded to the request for opinion stated emphatically that there are too many dealers. Said one: 'Where we now have fifteen appliance dealers in our town of 8,500 we had approximately four to five prior to the war . . .' It must be admitted that since the war the population of that town has probably increased but has it increased three-fold? This would have made the prewar population less than 3,000.

The representative of a large wholesale house in Western Canada made this remark on the subject of franchises. 'Definitely there are too many appliance dealers in the larger cities and towns and it will be a case of the survival of the fittest.'

Another dealer had this to say: 'One of the problems facing retailers today is that when electrical appliances were in short supply, everybody who was able to grabbed them and put them on their floor. Today in Saskatchewan you can drive into any little village where there is an implement business or a garage and you will find sitting on their floor washing machines, refrigerators, electric ranges; and also a number of them carry the smaller appliances -- that is, toasters, irons, etc. These people consider this as not really a part of their business and will dispose of them at any price, or if they sell an implement will throw in a refrigerator or a washing machine at cost as a premium.' Does this indicate that manufacturers are to blame for the situation? One dealer put it this way: 'Greedy merchandising policies plus inexperience (on the part of many dealers), plus poor control

over sales representatives in the field has enabled anyone with a few hundred dollars to get a "franchise". The results are as expected.'"

Similar opinions were expressed by a number of electrical appliance retailers who appeared before the Commission. One said that there were at present several times as many appliance retailers in greater Toronto as there were in 1946. The reason given for the increase was that for the first four or five years after the war, appliance retailing was a very lucrative business, since all dealers could sell all the appliances they were able to get, and there was no competition in price. Demand was so great that sometimes the merchandise was not even taken into the store, but was delivered to customers as soon as it was received from the manufacturer. It was added, however, that the number of dealers in Toronto was currently on the wane because of the keenness of competition (p. 665). Another retailer said that there had been a growth in the number of appliance outlets in Windsor since the war, as in other cities. It was said that appliance businesses were started in any vacant store to take advantage of the accumulated demand from the period of wartime shortages and the new demand for television. It was estimated that there had been an increase of 60 to 75% in the number of appliance stores in Windsor (p. 710), although some of the new dealers had dropped out and others were not doing very well, through lack of experience, inadequate financing and tightening credit.

The Ontario Association of Radio-Television & Appliance Dealers Inc. said that there had been a great growth in the number of appliance outlets since the war in all localities, and not only in the metropolitan area of Toronto (p. 746). The Canadian Sporting Goods and Cycle Association said that there had been a great influx of people into the sporting goods and appliance business at the end of the war, attributable to the existence of a sellers' market (p. 577). When the buyers' market appeared there were a number of retailers who failed because they did not know how to sell and were not qualified to be in the business (p. 578). It was added however that some who had demonstrated their ability to survive the first period of adjustment to a buyers' market, were being forced out of business by loss-leader selling. It was the opinion of the Canadian Wholesale Hardware Association that there had been a considerable growth in the number of outlets for appliances when these products became more readily available at the end of the war (p. 519). A spokesman for the Association did not agree however with the views expressed in the Hardware and Metal article, quoted above, though admitting there was a certain amount of truth in it. This representative said that other factors which had to be taken into consideration were that there had been increases in the population of the country, and in the consumption of electrical appliances, which would warrant an increase in the number of retail outlets (p. 523). Another member of the delegation said that there had probably been too many appliance dealers but he also expressed concern over the number of recent

failures in the business (p. 524).

Comments of a different nature were made on this subject by the Canadian Electrical Manufacturers Association, among others. While admitting that there had been a substantial increase in the number of dealers handling small appliances, the Association stated that there were still too few (p. 955). In the major appliance field it was said that some manufacturers had not been able to build up dealer organizations which were adequate in numbers because there had been material shortages at the end of the war, later there were restrictions on consumer credit, and finally there came the ban on resale price maintenance (p. 956). It is obvious however that the interest of an individual manufacturer in having the greatest number of dealers stocking and promoting his product is not necessarily the same as the public interest in the most efficient system of distribution. Even in the case of the individual manufacturer it may be more advantageous to have well selected dealers handling the product in adequate volume rather than to have a very large number of dealers making infrequent sales. The B. C. Retail Hardware Association gave the opinion that under resale price maintenance it would not have mattered if a considerable number of new entrants had come into the trade after the end of the war, because established firms would not then have been affected by price-cutting, regardless of the number of dealers attempting to share the business (p. 3070). This contention runs counter to information received as to the experience in the United States, where resale price maintenance has apparently been unable to prevent aggressive dealers from reducing prices.

Some indication of the increase in the number of specialized outlets selling electrical appliances in the post-war period may be gained by comparing the number of household appliance and radio stores reported in the Census of Distribution, 1951, with the number of similar stores reported in the Census of 1941. The following table shows the number of such stores reported in the two census years in the 15 largest cities in Canada.

Table 2. - Number of Household Appliance and Radio Stores in Principal Cities, 1941 and 1951

City	Number of Stores 1941	Number of Stores 1951	Percentage Increase
Calgary	14	42	200
London	18	46	156
Edmonton	17	43	153
Montreal	78	166	113
Winnipeg	31	63	103
Victoria	13	26	100
Saint John	8	16	100
Vancouver	53	104	96
Hamilton	36	68	89
Windsor	22	39	77
Ottawa	17	30	76
Toronto	132	227	72
Halifax	9	15	67
Regina	12	18	50
Quebec	21	27	29
CANADA	1,648	2,789	69

It should be borne in mind that this table refers to only one category of retailer, and that the latest figures are for the year 1951. What increase there may have been in the number of other types of outlets handling electrical appliances, such as automotive stores, furniture stores, jewellery stores, etc., cannot be determined. On the other hand, it should also be borne in mind that in the decade 1941-1951 the population in the trading areas served by retailers in all of these cities grew, and the per capita consumption of appliances also increased. At the same time suburban market areas, often lying outside city boundaries, expanded. Any conclusions drawn from the table should make allowances for all of these factors.

In fields of trade other than the retailing of appliances, the influx of new dealers was not mentioned as a significant factor in relation to price-cutting. The opinion was expressed by The Toronto Retail Tobacconists Association that in the past five years there had been a considerable increase in the number of outlets for tobacco products (p. 417), and the Retail Merchants' Association of Canada (Saskatchewan) Incorporated expressed the view that because of the ease of entry into the food field, it was a normal condition for the trade to have in it numerous retailers who knew nothing of the conduct of the business (p. 2313).

(d) Increased Imports of Some Products

At least since 1950, other countries as well as Canada have been experiencing a transition from a sellers' to a buyers' market in some lines of goods whose production had been rapidly expanded to meet the pent-up demand from the period of wartime restrictions or the surge of buying following the outbreak of hostilities in Korea. It was to be expected that as competition grew keener in the United States and elsewhere, greater efforts would be made by foreign producers to increase their share of the Canadian market. Some Canadian industries, notably the textile industry, have felt this increased competition with particular force. The electrical appliance industry has also been affected, particularly in certain lines. It is necessary to bear in mind, however, that during the years 1948-1950 imports into Canada were restricted by currency controls and that in the absence of such controls competition in certain lines from imports would have played a greater part in that period. In the case of electrical appliances, another factor of considerable importance was the increase in the number of Canadian producers during the period of exchange restrictions, in the face of the situation that such controls were of a temporary nature. An expanded Canadian industry thus encountered a slowing down in the rate of consumer purchases, as the result of the over-taking of the backlog of demand for appliances, at a time when similar industries abroad were under great pressure to find markets. The annual output of refrigerators in the United States, for example, increased from about two million units in 1946 to over six million in 1950, but dropped to about four million in 1951 and has since remained at between three and four million.

In addition to this general problem of increasing import competition in 1952 and 1953, there was in Canadian industry evident concern about the importation into Canada of goods which were unusually low in price, as the result of the advance of the season or the marketing period in the United States. The seasons or marketing periods occur earlier in the United States than they do in Canada, and in representations to the Government it was contended by spokesmen for some of the industries affected that end-of-season lines were being exported to Canada, at the height of the season in Canada, at prices which could not be regarded as normal. This problem was regarded as one of particular gravity in the textile industry, but it was also thought to have serious aspects for others, including the appliance industry. As a result of representations made, Parliament passed an amendment to the Customs Act which came into force on December 8, 1953, which was designed to protect Canadian manufacturers from what was regarded as unfair competition from abroad, by providing that the value for duty purposes of such goods should be related to their average price in the country of export during a reasonable period.

An indication of how serious the problem of increasing imports from the United States was regarded in the electrical appliance industry is suggested by an editorial in the January, 1954, issue of Radio, TV and Appliances Trade Builder, part of which reads:

> "Initially thought by some to be a way out of a difficult situation with respect to unfair competition from imported refrigerators and other items, the new tariff regulations designed primarily to benefit the textile trades seem to contain little comfort for hard-pressed Canadian electrical manufacturers. While the new law may prevent manufacturers south of the border from using this country as a cut-price dumping ground for 'seasonal' goods after the demand has been satisfied in that great nation, it does not take into account surpluses that are accumulating which have no seasonal aspect. Electrical refrigerators and other appliances could be cited as examples of merchandise in this category. That Canada is feeling the effect of the situation is shown by import figures which reveal that 28 per cent of the total Canadian demand for electrical goods is being filled by foreign imports. About 50 per cent of Canada's electrical refrigerator sales during the past two years originated in the U.S."

In representations made to the Commission by the Canadian Electrical Manufacturers Association, reference was made to "the literal dumping of tens of thousands of refrigerators in Canada in 1953 and 1954" (p. 977). It was argued that Canadian importers, anticipating a change in the basis of valuation, bought heavily in the United States and brought as many refrigerators as possible into Canada, before the legislation became effective in December, 1953 (p. 978). It was said that it was the sale of these American built refrigerators which started a good part of the price-cutting in 1953.

There is little doubt that increased imports were an important factor in the trend toward more active price competition in the sale of certain classes of household electrical appliances in Canada. In some instances, as appears to be the case with electric vacuum cleaners, a considerable part of the imports may supply sections of the Canadian market not fully served by Canadian producers. In the case of electric vacuum cleaners, imports are divided between United Kingdom and other European sources and the United States, but the average value of the cleaners imported from Europe is considerably lower than that for cleaners imported from the United States. The annual reports of the Dominion Bureau of Statistics on the Electrical Apparatus Industry contain data on production and imports of several classes of household electrical appliances. Although the product categories are not strictly comparable, the figures for production and imports covering somewhat similar classes give a fairly clear indication of the relative importance of imports. The data in the following table except for factory sales of radio and televion sets are derived from the reports

on "The Electrical Apparatus and Supplies Industry" for the years 1950 to 1953. The figures for factory sales of radio and television sets and production figures for 1954 have been taken from various monthly manufacturing reports published by the Dominion Bureau of Statistics. The figures for imports have been taken from "Trade of Canada".

Table 3. - Production and Imports of Certain Classes of Household Electrical Appliances, 1950-1954

	Number of Units				
	1950	1951	1952	1953	1954
Electric vacuum cleaners (excluding hand models, attachments and parts)					
Domestic production	152,470	130,007	126,910	107,959	(1)
Imports	77,071	58,834	67,899	104,068	102,672
Electric cooking stoves					
Domestic production (models over 35 amps.)	160,382	132,718	143,160	171,776	(1)
Imports (models valued at over $25)	2,315	5,316	6,332	14,328	16,250
Mechanical refrigerators					
Domestic production (household models only, electric and gas)(4)	341,596	278,036	244,433	275,415	236,022
Imports					
(a) domestic or store, electric, completely equipped or not	11,088	109,624	202,506	184,749	105,723
(b) home or farm freezers, electric	(3)	(3)	(3)	35,302	23,691
Total imports	11,088	109,624	202,506	220,051	129,414
Electric Washing machines (domestic)					
Domestic production (automatic and conventional)	283,236	225,100	242,758	237,705	209,890(2)
Imports	1,721	4,304	13,355	29,233	25,201

(continued next page)

Table 3. - Production and Imports of Certain Classes of Household Electrical Appliances, 1950-1954 - Continued

	Number of Units				
	1950	1951	1952	1953	1954
Radio receiving sets					
Factory sales	758,619	574,232	568,884	620,860	487,237
Imports (including tourist purchases for 1950-1952)	46,950	55,809	82,458	24,364	15,781
Television sets					
Factory sales	29,623	39,185	137,236	366,498	623,856
Imports	(3)	(3)	(3)	16,973	19,085

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(1) Not available.

(2) Does not include apartment type machines.

(3) Not available separately.

(4) In addition, the production of freezers totalled 4,119 in 1950; 8,413 in 1951; 5,822 in 1952; and 8,284 in 1953. The number of freezers produced in 1954 is not yet available.

Imports of electric refrigerators decreased substantially in 1954 compared with 1953, the decrease being greatest in the case of domestic and store types. Although the domestic production of household refrigerators was lower in 1954 than in 1953 by about 14%, imports of refrigerators of all types fell by 41% so that the proportion of the latter in 1954 in relation to domestic production was less than in the preceding two years. Decreases in imports in 1954 are also shown for radios, washing machines and electric vacuum cleaners, although in the latter instance, the decline was slight. An increase of 13% is shown in the imports of electric stoves in 1954 compared with 1953, but as figures for the domestic production of electric stoves in 1954 have not yet been published, it is not possible to relate the quantity of imports to the total supply available. An increase is also shown in imports of television sets but in the case of both television and radio sets imports, over the years, have not been important factors.

Other industries undoubtedly have also been affected by the ending of wartime shortages and the return of competitive conditions abroad. Nevertheless the increase of imports of certain appliances suggests that this factor has been an important one in creating some of the difficulties complained of in this field. Another field which appeared to present retailers in some areas with very difficult problems in the period since 1951, namely, the tobacco trade, was also affected by increased imports from the United States. While imports of cigarettes based upon official figures have been insignificant for years, they more than doubled between 1949 and 1952. The importation of American cigarettes was one factor in the decision of Canadian manufacturers to grant wholesaler status to some of the large food chains at the end of 1952. The larger food chains had been importing low priced American brands of cigarettes in some quantities. Further, normal outlets for cigarettes about this time were faced with surreptitious competition, at least in some areas, from cigarettes smuggled into the country in large quantities, partly because the level of the Canadian excise tax, before the reduction in February, 1953, made the price of cigarettes in the United States unusually attractive. During this period both of these factors obviously contributed to the growth of price competition in cigarettes at the retail level.

3. Passage of Legislation Prohibiting Resale Price Maintenance Removed Limiting Effects of Fixed Margins

An examination of the representations made by those industries and trades expressing fears about the growth of price-cutting makes clear that their principal concern was not so much with spasmodic instances of severe price-cuts, although these were regarded seriously, as with a general tendency toward the narrowing of distributive margins, particularly in the metropolitan market areas.

The prohibition of resale price maintenance was generally given as the reason for the price reductions which resulted in smaller retail and wholesale margins, although information given for some products indicated that extensive price reductions were not made until a considerable time after the passage of the legislation banning resale price maintenance. It appeared that in those cases manufacturers' suggested retail prices were generally used as long as demand remained strong and supplies were not over-abundant, but that as soon as a buyers' market developed aggressive retailers took advantage of their freedom to reduce prices below those suggested by the manufacturer. No detailed statistical information was furnished the Commission to show recent changes in the realized margins of retailers generally in particular trades, but the general nature of the representations, especially with reference to the retail trade in electrical appliances, indicated that in certain localities, at least, those engaged in the trade considered that there had been a substantial narrowing of distributive margins. The submissions made by manufacturers of electrical appliances were largely to the same effect.

The Canadian Electrical Manufacturers Association indicated that manufacturers' suggested retail prices would normally provide the dealer with a markup on cost of 50% (p. 947). The Radio-Television Manufacturers' Association stated that markups ranged from about 25% to 50% on cost if suggested retail prices were followed (p. 1817). Such markups were said by one Toronto dealer to range from 33 1/3% to 50% on cost (p. 649). An appliance retailer in Montreal said that the usual margin when goods were price maintained was about 50% on cost, although the margins allowed on different products varied. Since the abolition of resale price maintenance however, his margin had narrowed, and currently, he said he was realizing, on his total appliance business, about a 22% markup on cost (p. 1778). He added that his volume of business, which had been about $75,000 in 1951, had trebled in the next year, following the abolition of resale price maintenance, and that last year the firm's turnover was a half million dollars. By permitting him to establish his own prices the change in legislation had given him the opportunity to compete successfully with the larger stores (p. 1775). In other evidence reference was also made to the effect of the legislation in giving greater scope to the small dealer, who was able to operate on lower margins than those provided by manufacturers' suggested prices, to build up his business by offering lower prices to the public (p. 3790). Some of the witnesses appearing before the Commission reported they were currently doing business in the appliance field with average markups as low as 15% to 17% on cost (pp. 648, 1033).

To what extent the evident narrowing of the margins in the distribution of appliances is attributable to the removal of the limiting effects of resale price maintenance, and to what extent margins would have been reduced in any case as a result of some of the factors

discussed earlier cannot be determined, as various factors become inseparable in their effects on the market. Statements made and information supplied by many witnesses point to the abolition of resale price maintenance as of major importance, but other evidence indicates that the abundance of supplies in the recent period has been a factor of no less importance.

It is generally accepted that under a system of resale price maintenance, retail margins provided are the same regardless of the operating costs of the individual retailer. Two manufacturers, Canadian General Electric Company Limited and Sunbeam Corporation (Canada) Limited, were very explicit in their critical attitude toward any selling by a retailer at less than their suggested retail prices, and contended that they should have the control of the retail prices at which their products were sold. Some other manufacturers thought that a greater degree of flexibility might be permitted as long as they were in a position to exercise control if they wished to do so. Whether the policy under resale price maintenance had been as rigid as that indicated by the two manufacturers mentioned above or had been somewhat more flexible, it was only to be expected that once the practice was prohibited, those retailers who had been observing the resale prices only by reason of the manufacturer's control would avail themselves of the freedom provided by the legislation to set their own prices at lower levels. It is also the case that when manufacturers were able to establish and enforce the observance of resale prices, they were open to demands from retailers to increase the markup provided for the dealer. The Canadian Electrical Manufacturers Association confirmed that in the past manufacturers had had to resist pressure from some retailers for wider margins (p. 948).

There is considerable evidence before the Commission which indicates that the margins provided by electrical appliance manufacturers in their suggested list prices, which margins do not appear to have changed substantially since the practice of resale price maintenance was prohibited, are regarded as excessive by many dealers. For example, it was brought to the Commission's attention that at a meeting of 142 radio, television and appliance dealers in Toronto on April 28, 1954, the following resolution was passed:

> "It is the opinion of the dealers present, where list prices are too high, that the manufacturers immediately adjust their suggested list so as to bring back to the buying public some semblance of value so that the cut-price dealers cannot show such a difference between the manufacturers' suggested list and their selling price."

A Toronto retailer stated that manufacturers' list prices were unrealistic and far higher than they ought to be (p. 689). An example was given of a popular food mixer which this dealer sold for $39.95 while its suggested price was $58.95. He regarded the latter price as altogether too high (p. 691), and went on to argue that if

manufacturers were in a position to insist on the observance of list prices business would slow down to a snail's pace (p. 692). It must be noted that the business of this retailer had been built up on a basis of high turnover at low prices. He made the further observation that no retailers in Toronto were charging the suggested list prices because people would not pay them (p. 666). Another retailer said in evidence that the manufacturer should bring his suggested list prices down, so that the spread would not be as large between the prices suggested and those charged by the price-cutting dealers (p. 789). It was the opinion of this witness that some of the difficulties for the retailer in the present situation would be corrected if the manufacturers either abolished their suggested list prices entirely , or reduced the apparent margin of profit (p. 775). He had adopted the policy that there was no such thing as a list price and now quoted his own prices without reference to the manufacturers' suggested list (p. 787). Another Toronto retailer who said that the manufacturers' suggested retail prices were unrealistic (p. 1025) also argued that it would be better for all concerned if the dealer could advertise and sell at his own price, without reference to a suggested price by the manufacturers (p. 1039). That this opinion was to some extent shared by retailers in other parts of the country was indicated by a number of witnesses, including one retailer in Western Canada who said that every dealer was advertising at prices lower than the suggested list (p. 2432), by another who indicated that the margin between cost and list prices, at least before the war, was in some cases excessive (p. 3109), and by another who said that the ban on resale price maintenance had resulted in lower prices to the consumer (p. 2580).

One explanation of what were regarded as excessive margins was given by the British Columbia Division of the Retail Merchants' Association of Canada. They argued that as a result of the restrictions on consumer credit occasioned by the Korean war, some electrical appliance manufacturers attempted to assist sales by retailers by setting up very high list prices, so that the down payment requirements could be met by giving large trade-in allowances on such articles as cups and saucers in the purchase of appliances (p. 2731). During the period of credit controls, they said, there was a general widening of the margins allowed by manufacturers. The "better class" of manufacturer did not at first compete with many smaller ones who had widened the margins on their products, but later they had either to increase the margins on their lines or drop them and introduce new ones with longer margins (p. 2734). It was said that at the time controls were imposed there was a marked increase in the list prices of lesser-known branded merchandise, so much so, that it could be regarded as being related to the imposition of controls. The large trade-in offers by dealers were confined to the items on which the margins had been increased (p. 2736). Another explanation given by this Association was that some manufacturers had set up very high list prices on large appliances, so that the dealer could give, say, a hundred dollars as a trade-in allowance for an old radio, and thus the net price of the new product

would look more attractive to the customer (p. 2733).

A member of the delegation representing the B. C. Retail Hardware Association, although favouring the restoration of resale price maintenance, thought that more realistic examination should be given to the scale of margins for different products. In reply to questions by counsel and members of the Commission he made the following comments (pp. 3080, 3081):

"MR. GERIN-LAJOIE: Gentlemen, it has been said to the Commission by some retailers, particularly in Toronto, that the spread between the buying price of a retailer and his suggested selling price was unrealistic -- that is, that it was too high. What would be your view on that?

MR. STEPHENS: I made that same suggestion to one of the big paint companies not very long ago. The question of price-cutting came up by one store, in connection with paint which I happened to have an agency for. The manager of the paint company came down to see me -- I don't know why -- but he came down to see what I had to say about it. And he smiled when I said to him, 'Your biggest trouble in this business is that your margin of profit is too high. That is why you are getting price-cutting. The merchant can get by on less than what you are allowing him.' He could not fathom my saying that. Nevertheless it is a fact. And when we suggest that a maintained price be put on these goods, we do not suggest that on major appliances it should be 33 1/3 per cent markup to the public. That is what has probably brought this about.

MR. GERIN-LAJOIE: But if you leave it to the manufacturer to determine the price, are you not exposed to that situation?

MR. STEPHENS: No, because the competition will take care of that.

MR. GERIN-LAJOIE: That is the situation you had, apparently -- because you have at the present time suggested prices. And apparently--

MR. STEPHENS: No; but if this was all summed up and brought to a head I am pretty sure -- and I cannot say this for certain -- but I am pretty certain that after what has gone on in the last few days the manufacturer would suggest a lower retail price than they have suggested at the present time.

THE CHAIRMAN: You mean that what has happened since the abolition of resale price maintenance has taught them that lesson?

MR. STEPHENS: Yes. I do not believe that the manufacturer will expect the retailer to make 33 1/3 per cent, for instance, on an article at $300. I do not think he should.

MR. WHITELEY: You think that competition that has been brought into play has demonstrated that you can get by on lower margins?

MR. STEPHENS: Yes -- but not so low that you are selling them for less than what they cost."

A number of contrary views were expressed about the margins on electrical appliances being unrealistically high, thus inviting price-cutting. One manufacturer said that if he chose to price himself out of the market this should be his privilege, and argued that competition from other brands would destroy a company that followed this policy. The argument was made that margins are narrower on branded lines than on non-branded lines and that this serves to show that the prices of branded articles are not out of line (p. 92). This argument overlooks the fact that branded lines generally have a far higher degree of public acceptance, because much of the promotional work and advertising is done for the retailer by the manufacturer, so that a more rapid turnover may be obtained at less cost than in the case of articles unknown to the public.[1] It was also argued that anyone offering to sell an article at a lower price is bound to sell more than he would at a higher price, so that an increase in sales by a price-cutter is no indication that prices were unrealistically high in the first place (p. 517). Another manufacturer contended that the prices of small appliances had risen less in the period from 1939 to 1950 than the prices of many other items and less than the cost of living (p. 858). Since few factors affect different products in the same way and many products are affected by

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(1) Although the following example relates to the field of pharmacy, it illustrates the way in which rate of turnover affects the profitability of an item for the retailer. In an article in Drug Merchandising of March 1, 1955, J. W. Linklater, Field Manager, A. C. Nielsen Company of Canada Ltd., gave the following table to demonstrate the importance of the rate of turnover:

Proprietary Item (Example A)	Sales Share	Number of Stock Turns Per Year	Gross Profit	Profit per Dollar Invested in Inventory Per Year
Leading Brand-A	47.0%	4.7	40.8%	$1.92
Leading Brand-B	32.7%	1.6	45.3%	$ .72
Minor Brands	20.3%	0.8	52.2%	$ .42

entirely different factors, it is not possible to draw any valid conclusion as to the level of distributive margins from such a comparison. It was also argued that suggested prices for small appliances in Canada compared favourably with the list prices of similar articles in the United States (p. 802). This argument is subject to similar considerations in regard to the effect of varying forces and, in addition, many of the better known small appliances in the United States are price maintained. It was conceded by this witness, however, that the establishing of suggested list prices by the manufacturer contributed to price-cutting because they offered a standard of comparison when they were widely advertised and became very well known (p. 872). In this connection the Northern Electric Company Limited said that electrical appliance manufacturers were considering the discontinuance of suggested retail prices, but no company had yet taken this course (p. 1571). The Canadian Electrical Manufacturers Association said that the suggested list prices were not excessive because in order to do the work expected of him the retailer needed the margins provided (p. 957), and the Canadian Retail Hardware Association said that the markups provided by the suggested retail prices were not unrealistic, rather that they were reasonable and just (p. 3688). The Ontario Association of Radio-Television & Appliance Dealers Inc. said that the question of whether or not list prices were too high was one on which there was no agreement among dealers in Ontario (p. 737).

As indicated by the submissions referred to, the opinions on this question are generally divided between those appliance dealers on the one hand who believe it is possible to conduct business successfully on smaller margins than are provided by the manufacturers' suggested retail prices, and on the other hand, those manufacturers who believe that more extensive dealer display, rather than lower prices, will produce the greatest sales volume for them, and those retailers, including hardware dealers, whose costs of operation are perhaps at such a level that in many cases margins at list prices are considered no more than adequate.

While the most apparent effect of resale price maintenance is the limitation which it places upon the freedom of the individual merchant to determine his own pricing policy, this is sometimes more evident by way of contrast, in the more flexible pricing policies pursued in some trades as compared with others. For example, complaint was made that since the prohibition of resale price maintenance, food chains have been selling hardware articles and such traditional drug store products as Kleenex, Modess of Pablum at prices which yielded substantially lower margins than the traditional retailers were accustomed to. The Commission has received no evidence that these products have been sold below cost by the food chains, rather they appear to have been regarded by food chains as providing somewhat larger margins than are realized in the sale of many other lines. It seems clear, therefore, that with respect to these products, the abolition of resale price maintenance has permitted the consumer to enjoy the benefits of a lower cost system

of distribution. Fixed margins would appear to have been a factor in maintaining some of the traditional distinctions between trades, and their removal means, in some cases, a lowering of prices, as some products begin to move in volume through new channels to the consumer.

In arguing for the restoration of resale price maintenance, it was suggested by one witness that if, under this system, retailers waxed unduly rich for any length of time, only a brief period would elapse before a surge of new retail competitors would split up the business so that the profits of no one firm would be unduly great (p. 1608). Several times during the course of its hearings this argument was made to the Commission. Such an argument takes no account of the possible effects of fixed margins on efficiency in distribution. In the opinion of the Canadian Association of Consumers any loss-leader legislation similar to resale price maintenance would diminish the spur to retail efficiency by removing from competition at the retail level the most powerful factor, namely, price competition. It was said that fixed margins tended to allow the partition of a local market among more retailers than were needed, to permit three dealers in one class of goods to exist marginally, where two might have lived profitably. The Association suggested that it was in those areas of retail trade where resale price maintenance was formerly most common, that the problem of redundant dealers presently existed. It was submitted further that a multiplicity of weak retail outlets constituted an expensive form of distribution, was a direct consequence of the artificial protection of the past, and would be a likely result of any new form of price-fixing (p. 3907).

It was argued by some witnesses that resale price maintenance was never effective in controlling the prices of some products such as major electrical appliances where the practice of giving exaggerated trade-ins was common. It seems clear however that the abolition of resale price maintenance has resulted in increasing to some extent the amounts offered on trade-ins, except perhaps in Toronto where, in the case of appliances, the practice of allowing unreal values for trade-in articles seems to have been almost completely superseded by open price reductions. Certainly it was the view of some witnesses that there had been an increase in the number of transactions involving trade-ins since the abolition of resale price maintenance (pp. 614, 1620). It was conceded by other witnesses that the practice of allowing exaggerated trade-ins could not have been general across the country before the change in legislation since such a situation would have suggested that most retailers felt that the margins available on electrical appliances were larger than were needed, and this was not the common view.

The complaint was made by one witness that the abolition of resale price maintenance had placed the small retailer in an unfair competitive position because his buying disadvantage had been increased. It was said that whereas the manufacturer used to give the

larger retailer an extra 2 or 3% discount, this had now been increased to from 10 to 14%, which enabled the favoured buyer to sell at prices sometimes no higher than the small retailer's buying cost (p. 562). There is no evidence that these figures reflect the general policy of manufacturers in the electrical appliance or sporting goods industries which were the fields under discussion, though undoubtedly there are occasions at the present time when the large retailer is able to buy on very favourable terms. It may well be, nevertheless, that in certain fields the elimination of fixed margins has resulted in some modification of the prevailing discount structure so as to allow large buyers discounts more closely related to the actual cost savings accruing to the manufacturer as a result of volume sales. The granting of wholesale prices by cigarette manufacturers to the food chains in late 1952 may be a case in point.

An illustration of the opposite attitude is found in an action taken by the Canadian General Electric Company Limited. That Company informed us that it attempted to reduce price-cutting on its electric floor polisher by eliminating the discounts formerly granted on purchases of quantities of 24 and 48 polishers, retaining as its sole quantity discount that available on purchases of lots of three (p. 818). This action should be considered in the light of the fact that individual retailers sometimes buy a hundred or more of these polishers at one time.

CHAPTER IV

REPRESENTATIONS MADE AS TO THE EFFECTS OF LOSS-LEADER SELLING OR OF SELLING ON NARROW MARGINS

1. In Relation to Consumers

(a) Reaction to Varying Prices

It was argued by a number of those appearing before the Commission that loss-leader selling or the offering to the public of a few products in the merchant's assembly of goods at low markups, deceived the public into thinking that prices charged were equally low on all lines. In much of the literature on loss-leader selling, this allegation has received considerable attention. Dean Grether, during his appearance before the Commission, referred to the subject as follows (pp. 3284, 3285):

> "In the second place, it is sometimes argued that the use of loss-leaders is a type of deceptive practice which confuses consumers; that it is intended to make consumers believe that all the other items in the dealer's assembly are sold at equally low marketing rates. I think all must agree that this element is likely to be present to a greater or lesser extent. Certainly I cannot stand here and attempt to interpret to you the behaviour of all the housewives in the United States, or tell you to what extent they are rational or relatively ignorant as they approach their buying. I think we are all agreed, though, that housewives are quite accustomed to buying specials. They tend to watch advertising; and my surmise is that a large proportion of them -- perhaps the great majority of them -- understand this as a tactic, and that they will watch values between competing enterprises, and do considerable shopping; and I would think that they become very shrewd in judging prices and values as between different stores -- although it is true that there may be a certain element of confusion in their minds, in individual situations. My final reaction is that the confusion here would not be as great as the harm to them if price-cutting could not be employed widely and competitively in the distributive trades."

A number of points were raised in opinions expressed by various witnesses which suggest that whatever element of deception exists in the pricing practices questioned is of limited importance in

Canada at the present time. It was the view of the Canadian Association of Consumers that consumers were not misled into believing that all prices were similarly reduced when one item was offered at a bargain price. To argue otherwise would be to discount the intelligence of the consumer. It was suggested that if the consumer was not keenly aware of actual values and prices, an item featured at a bargain price would not lure him and there would be no incentive for price competition between merchants (p. 1739). One electrical appliance retailer who advocated the restoration of resale price maintenance and who said he used loss-leaders as a defensive tractic, was questioned on this aspect (pp. 608-609):

> "THE CHAIRMAN: You say you have sometimes used loss-leaders. Have you found it a profitable device?
>
> A. It is profitable in this regard: It creates the inference that the other items you are selling may be a little lower than they are. It brings you other traffic which does not seem to be particularly profitable. They will occasionally buy something else but the majority of people scoot in and out, they scoot in and buy the loss-leader and scoot out again."

The Canadian Electrical Manufacturers Association pointed out that the monetary outlay for many electrical appliances is substantial, and when consumers are intending to make an expenditure of this order, they are likely to shop and compare prices before buying, which they can do effectively by noting the manufacturers' catalogue numbers. This was alleged to make the appliance industry particularly susceptible to price-cutting (p. 916). The argument, of course, overlooks the fact that, in the case of larger electrical appliances, each purchase is a major one and the "leader" aspect scarcely seems applicable.

The Sunbeam Corporation (Canada) Limited argued that the consumer was intelligent enough to spend his money wisely, which in itself would help to prevent abuses under a system of resale price maintenance. Because the consumer was able to judge the relative values of similar products a manufacturer who set too high a retail price for his product would find consumers switching to a competing brand at a lower price if one was offered (p. 1138). Other witnesses paid tribute to the shrewdness of the average buyer, one suggesting that at least in Toronto, it was no longer possible to hoodwink buyers of appliances with spurious trade-ins, because they were satisfied only with lower prices reflected in genuine price-cuts (p. 1030). Similar views were also expressed about other products. The consumer's knowledge of prices and values was said to be particularly well developed with respect to food items, and he quickly became aware of deceptive pricing practices (p. 2914). In connection with this question of deception in relation to the food field, one witness said that when a product was sold on a very low margin by one retailer, the consumer was deceived into thinking other

retailers in the area were charging exorbitant prices, even though much higher prices prevailed in other cities (p. 2404). It is difficult to see how the consumer, even if misled in this way, would remain deceived for any length of time.

Many of the parties appearing before the Commission alleged that the upsetting of uniform prices at the retail level resulted in detriment to the public, because widely varying prices created confusion for consumers in several different ways. For one thing it was said that the abolition of resale price maintenance had removed a familiar guide for purchasers, who now might find the more expensive line produced by a manufacturer sold at a lower price in one store than the less expensive line of the same manufacturer in another store (p. 725). Confusion also arose as to whether the advertised item was a new article or an older model, or one without all the expected accessories (p. 3056). It was also argued that while the public was accustomed to the clearance at low prices of distress merchandise, it was confused by low prices on goods which were obviously not distress items (p. 2387). In some cases fluctuations in price were linked with misleading advertising as the cause of loss of consumer confidence (p. 788). One witness suggested that the public expected to find the products of a reputable manufacturer sold at the same prices everywhere (p. 1057) and that the appearance of differing prices in the same newspaper was apt to cause confusion in the minds of consumers (p. 1061). This was later qualified by the suggestion that, though the consumer might like to shop for goods bought frequently for daily requirements, he did not like to see different prices on durable goods bought infrequently (p. 1089).

Other views were advanced, to the effect that while loss-leader selling had greatly confused the public, this had not necessarily been to the detriment of the public (p. 761). One dealer who had shifted his operations to a basis of competitive pricing thought that while consumers were confused by frequent changes in prices, they generally lost nothing except confidence in their regular dealers and some degree of service when they bought on the basis of price alone (p. 766). Another witness attributed any confusion, not to varying prices as such, but rather to misleading advertising (p. 707). Still another argued that what confused the public was not the variety of prices at the retail level but the unrealistically high retail prices suggested by the manufacturer (p. 688). The Canadian Association of Consumers said that this question of confusion had come up at public meetings held by branches of the organization and very few people had indicated any feeling that the existence of a customary price outweighed the benefit of freely competitive pricing (p. 1744). The Canadian Federation of Agriculture argued that any confusion which existed as a result of the abolition of resale price maintenance, was in the minds of those retailers who had been protected from competition for so long that they did not know how to operate under truly competitive conditions (p. 3943). In the opinion of the Federation, the public was not aware that resale price maintenance was made illegal in 1951,

and was perhaps surprised to see varying prices on products for which they had been accustomed to pay a uniform price, but the public was happy rather than confused to see competition restored to the retail trade (p. 3944).

Another aspect of the argument that the disappearance of uniform retail prices confused the consumer by destroying the criterion of value, was raised by the suggestion that sales would be reduced because the consumer would hesitate to buy, for fear he was not obtaining the article at the lowest available price (p. 1056). A number of examples were given of how annoyed customers were, upon discovering that a recently purchased article could have been bought at a lower price elsewhere (p. 728). In his presentation, Professor Mund referred to this matter as follows (p. 3242):

> "I daresay there are those situations. When I buy, we will say, a security I dislike waking up to-morrow morning and seeing that I could have bought it for less. I do not like that either. But I do not know that we should fix the prices of securities because of that fact.
>
> It is true that people certainly and frequently find that if they had waited a little while they could have bought for less. But that is just one aspect of our system under which prices reflect the changing forces of supply and demand."

In referring to the manner in which special offers had sometimes been made prior to the prohibition of resale price maintenance, one witness said that consumers were not so disturbed over missing a bargain represented by an exaggerated trade-in as they were over one represented by a price-cut (p. 2608). Furthermore, under resale price maintenance, bargains were not so widely advertised, so those consumers who paid the full price did not feel cheated (p. 976). While it might not be to their disadvantage, another witness said a variety of prices does confuse consumers because they have no assurance that they have bought as cheaply as anyone else (p. 2594).

It was argued also that varying prices, particularly for the more expensive consumer durables, inconvenienced the public by inducing them to shop all over the marketing area, and sometimes even leading them on wild goose chases when merchants had run out of stock (p. 851). This matter was also referred to by Professor Mund (pp. 3242-3243):

> "Now, sometimes it is said, 'Well, the consumer has benefitted because he does not have to shop around. He saves time. He can make a budget. He knows what it is going to cost him today and tomorrow, both here and there'. But it seems to me that that is a sort of forced [solicitude] for the interests of the consumer.

I think I should be privileged to decide that, and not to have some retail store decide for me that I do not have to shop around. Indeed, the very essence of competition is the procedure of shopping around - a situation in which you do shop around and that you do give up your trade, if you can get a better price. That is the way competition works.

It is all a matter of alternatives, you see. The thing I fear is that once you permit someone to fix markups then the next step will be to have the government come in and see whether those markups are excessive or not. That is possibly the next step."

Finally, representations were made to the effect that price-cutting retailers destroyed the desire to own a product, a desire which had been built up in the minds of consumers by constant advertising by the manufacturer (p. 1599). It was suggested that the buyer lost his pride of possession and delight in ownership when he saw his purchase advertised at a variety of prices (p. 1632). It was argued that there was evidence that people would not buy appliances because of the feeling that if the articles were cheap, they could not be good (p. 997). In opposition to this contention there is the fact that large sales of electrical appliances continue to be made by those merchants who are prepared to trade on narrow margins. Doubt as to the validity of these representations is increased by the argument made by one witness that the general reputation of the product, and not just the specific items on sale, is depreciated in the eyes of the public when the price is cut by retailers, but that when the price is lowered by the manufacturer, the public realizes merely that for one reason or another a new price prevails, and thereupon the product becomes more attractive (p. 1616).

(b) Reality of Benefit of Lower Prices

In many of the representations made to the Commission it was argued that for a variety of reasons, the consumer did not actually enjoy lower prices as a result of the featuring of goods at low prices either by offering bargain prices on a few items in the retailers' stock of goods, or from the selling of all items in the retailers' assembly at lower margins.

There can be little quarrel with the argument commonly made that the purpose of offering bargain prices on a few products in the merchant's assembly is to attract a greater volume of traffic to the store, in the expectation that the customer will be encouraged to buy other products as well as the featured article. The same thing is probably true in many cases when particular products are featured by other means than special prices, as in advertising campaigns and demonstration activities. When, however, the argument goes on to

allege that other products in the merchant's assembly must be marked up in price to compensate for the losses or low markups involved in the sale of the bargain items, information is lacking to support the conclusion, and, in fact, the available information is to the contrary.

In the first place, if the customer buys only the leader item, other things being equal, he is obviously better off. In this connection, although we note that it was not a widely held view, the Canadian Association of Radio & Appliance Dealers (Victoria Branch) pointed out that because electrical appliances involve substantial expenditures for the average purchaser, he is unlikely easily to be induced to buy more than the article offered as a bargain (p. 2573). In the second place, even if he does buy other goods in addition to the featured articles, it is impossible to generalize about the relative prices of the other goods. The issues to be considered in this respect have been outlined by Dean Grether at page 218 in his study "Price Control Under Fair Trade Legislation", as follows:

> ". . . It is frequently contended that loss leaders must be subsidized by the other products in dealers' assemblies and that this subsidy must take the form of higher prices for the other goods. Conversely, it is argued by others that each retail price is independent and obviously already at the most profitable level, and that it would be suicidal for a dealer to attempt to recover leader losses by increasing prices. Each of these positions is unsound when formulated so crudely; a reasonable explanation must consider variable conditions, rather than one fixed set of circumstances, and must be based upon the recognition of the fundamental difference between the demand for a class of products and the demand for the products of an individual firm.
>
> The issues can be focussed about the practical problem of retail marking rates. Do leader practices make for a different adjustment of marking rates between products in dealers' assemblies from that which would occur if leaders were not used? Obviously there is some inter-dependence of demand factors if they are profitable, and also some degree of arbitrary manipulation of marking rates when the prices of leaders are cut. But does it follow that prices of other articles must be raised? If the leaders accomplish their objectives, the increased sales of other goods may cover or more than cover all the costs at the existing price level. If the leaders are reduced merely to their own direct costs, then the volume of sales on the balance of the products will merely have to increase sufficiently to absorb that portion of the fixed costs that would normally have been assessed against the leaders. If the leaders are reduced to invoice cost or to a lower level, then the burden upon the other goods will be heavier but might be borne by them at the existing level if the increase in sales were large enough

and the enterprise had excess capacity or was below its optimum scale of operation. Thus, if leaders are sufficiently successful, there is no reason from a cost standpoint for the prices of other goods to increase under the above conditions."

In an attempt to discover for one broad field of retailing where loss-leaders were alleged to be prevalent, what indications there were that retailers who made a practice of using leaders, did in fact charge higher prices on other products, so that the consumer on his over-all purchases was no better of, if not worse off, than if he had purchased elsewhere, the Director undertook a comparison, from the statistical material available in his files, of the prices charged by a group of chain food stores and the grocery departments of department stores, all of which used leaders and specials more or less frequently in their advertising, with the prices charged by a group of independent retailers for the same items. The independent grocers were located in the same areas as the others, the grocery items were selected by a group of retailers as being representative grocery products, and the prices were regular prices in effect in the various outlets at approximately the same time. The three tables which follow record the results of this study. In the case of British Columbia and the Prairie Provinces, the comparison was based upon price data from eight chain and department stores and eighteen independent stores; in the case of Ontario, from four chain stores and eighteen independent stores; and in the case of Quebec, from two chain stores and seventeen independent stores. Prices on each of the items compared were not obtained in all cases from each retail outlet.

Table 4. - Chain and Independent Store Selling Prices - British Columbia and the Prairie Provinces

Product category	Number of items in group	Number of items in which average independent price was equal to or below average chain price		Aggregate of average chain prices as percentage of aggregate of average independent prices
		(1) Below	(2) Equal to	
Baking Products	26	1	-	92.6
Beverages	22	1	-	95.6
Biscuits	11	2	-	93.6
Desserts	6	-	-	92.8
Cereals	15	-	-	90.9
Infant Foods	4	-	-	98.5
Cleansers	20	2	-	95.9
Dairy Products	7	-	-	89.6
Detergents and Soaps	9	1	-	95.8
Drug Products and Toilet Items	19	2	2	94.6
Electric Light Bulbs	7	3	1	100.5
Miscellaneous Canned Goods	18	-	1	92.6
Soups, Canned and Packaged	11	-	-	94.3
Pickles and Condiments	13	2	1	95.2
Frozen Foods	6	2	-	98.3
Macaroni and Spaghetti	9	-	-	91.0
Fruits, Jams and Marmalades	11	-	-	89.1
Tobacco	7	-	4	99.8
Paper Products	8	-	-	92.5
Total	229	16	9	

Aggregate of average chain-store prices for 229 items as a percentage of the aggregate of average independent-store prices for the same items: 94.7 per cent.

Table 5. - Chain and Independent Store Selling Prices - Ontario

Product category	Number of items in group	Number of items in which average independent price was equal to or below average chain price (1) Below	(2) Equal to	Aggregate of average chain prices as percentage of aggregate of average independent prices
Baking Products	23	1	1	95.0
Beverages	16	3	1	95.7
Biscuits	10	2	1	98.3
Desserts	4	-	-	93.6
Cereals	13	-	-	94.2
Infant Foods	4	-	-	98.5
Cleansers	18	5	2	98.7
Dairy Products	5	-	-	93.1
Detergents and Soaps	10	1	-	95.6
Drug Products and Toilet Items	13	3	3	98.8
Electric Light Bulbs	3	-	2	98.2
Miscellaneous Canned Goods	15	-	-	90.5
Soups, Canned and Packaged	11	-	1	94.0
Pickles and Condiments	9	-	1	91.1
Macaroni and Spaghetti	7	2	-	93.2
Fruits, Jams and Marmalades	5	-	-	91.1
Tobacco	2	1	1	102.1
Paper Products	6	3	-	99.3
Total	174	21	13	

Aggregate of average chain-store prices for 174 items as a percentage of the aggregate of average independent-store prices for the same items: 95.9 per cent.

Table 6. - Chain and Independent Store Selling Prices - Quebec

Product category	Number of items in group	Number of items in which average independent price was equal to or below average chain price		Aggregate of average chain prices as percentage of aggregate of average independent prices
		(1) Below	(2) Equal to	
Baking Products	20	-	-	90.6
Beverages	13	1	-	93.3
Bread and Biscuits	9	1	1	94.7
Desserts	4	-	-	91.5
Cereals	9	-	-	88.5
Infant Foods	2	-	-	94.1
Cleansers	5	-	-	95.2
Dairy Products	2	-	-	86.4
Detergents and Soaps	4	-	-	88.7
Drug Products and Toilet Items	4	1	-	100.5
Electric Light Bulbs	1	-	1	100.0
Miscellaneous Canned Goods	9	-	-	87.4
Soups, Canned and Packaged	12	-	-	91.2
Pickles and Condiments	5	-	-	88.1
Macaroni and Spaghetti	7	-	1	90.7
Fruits, Jams and Marmalades	3	-	-	87.3
Tobacco	2	1	1	100.6
Paper Products	4	-	-	91.5
Total	115	4	4	

Aggregate of average chain-store prices for 115 items as a percentage of the aggregate of average independent-store prices for the same items: 92.6 per cent.

It was suggested by one witness that the grocery items selected by the Director, while representative, were frequently purchased by the consumer so that their prices would be well known, making it risky for any retailer to raise these prices to compensate for the low markups of leaders. For a similar reason it was suggested that the grocery trade was less open to the use of the practice than the furniture, clothing and fabrics, auto and electrical repair and service, plumbing and heating supplies, and drug sundries trades (p. 334). However this may be, the Commission has received no significant evidence relating to any line of trade to support the argument that other products in the assembly of a retailer using leaders must be raised to compensate for losses or low margins on the specials. The Canadian Association of Consumers doubted that this occurred. It was the view of the Association that special sales involving one or two items were usually advertising stunts to attract customers, and the process would be self-defeating if other items were marked-up, because the consumer was very price conscious (p. 1740).

A related aspect of this question, applying primarily to the sale of electrical appliances, involved the argument that the price-cutting dealer only appeared to sell on a very low margin but after attracting customers with misleading advertising finally sold at what was actually a higher price, after adding extra charges for packaging, delivery and, particularly, excessive finance charges (p. 547). One witness stated that one of the chief abuses in advertising was the use of the words "no cash down", where a private finance company was operated by the retailer, which provided funds to customers at excessive rates (p. 770). Another alleged that some price-cutters made more money from financing customers' purchases than from the sale of the merchandise (p. 2590). It was argued by several witnesses (pp. 2745, 3097) that price-cutting retailers had increased their finance charges, particularly in British Columbia, and that this had occurred before interest rates were increased by banks and finance companies (p. 2750).

On the whole, however, the evidence presented to the Commission on this question was highly contradictory. For example, one witness said that price-cutting retailers discouraged cash sales in order to profit from excessive finance charges (p. 3058) and another that the customer did not save money in buying from a price-cutting retailer unless he paid cash. He argued that those most in need of low prices, since they could not pay cash, were the very ones who did not benefit (p. 2747). Another witness attributed higher finance charges to the fact that some of the larger stores, which were not generally regarded as very aggressive competitors in the appliance business, had adopted a policy of "no down payments" and other dealers were forced to follow in order to compete. In the long run it was said that this would have the effect of forcing the customer to pay higher prices, because a large proportion of sales would then be handled by finance companies whose charges were necessarily high, and in

addition, it would lure customers into over-extending their purchases (p. 1606). By contrast with these expressions of opinion, one witness who denied that price competition in the sale of appliances had enabled more people to buy them, said that competition had become so intense that dealers were forced to a cash basis, thus eliminating those consumers who had to buy on credit (p. 616). The evidence of retailers selling in large volume did not support these representations. One of the largest appliance retailers in Toronto informed the Commission that he turned over all his financing to the General Motors Acceptance Corporation (p. 681). In British Columbia, the appliance retailer most frequently alleged to follow a policy of loss-leader selling, stated that his finance charges had remained unchanged since 1952, and were the same as, or lower than the rates charged by well-known finance companies. It was indicated that 75% of his business was done on a credit basis (p. 3143) but it was claimed that 42% of the total was repeat business which would tend to discredit the argument that customers were deceived by high finance charges (p. 3158). It would appear that the limited evidence available does not support the argument that there is any relationship between excessive finance charges and the offering of low prices.

Another way in which it was alleged that the consumer failed to benefit from what appeared to be lower prices, was that the quality of the manufacturer's product suffered. The National Council of the Baking Industry argued that when an industry became pre-occupied with price, the quality of the product deteriorated and other undesirable expedients were resorted to, and the illustration was given of the marketing of an 18 to 20 ounce loaf of bread to resemble a 24 ounce loaf (p. 149). It was argued by a witness in the appliance field that the merchandise supplied by many manufacturers had already deteriorated, owing to competition among manufacturers to market products which were principally attractive from a price stand-point (p. 731). In contrast it was said by dealers selling in large volume that the quality of branded lines of appliances was so well established that consumers could depend on the brand name and this reputation greatly simplified the work of selling. Another witness argued that retailers, in order to continue the loss-leader practice, exerted pressure on jobbers and manufacturers for goods of low price rather than quality, and in time this was bound to have an effect on the quality of the merchandise available to the consumer (p. 3016). Dean Grether made the following comments in reply to the question on this point (pp. 3295-3296):

> "MR. GERIN-LAJOIE: Now, another point which seems to have been covered to some extent -- but you may be able to expand somewhat upon it. Representations have been made to this Commission, up to now that loss leader selling results in pressure upon manufacturers by wholesalers and dealers for lower buying prices, which ultimately are reflected in the deterioration of products. Do you think there is any real danger of such a situation, in your experience?

DEAN GRETHER: In the first place, in this kind of situation, I think one always raises the question as to why the distributor waited for the use of this practice to ask for that. They always, presumably, try to get the best buy, the best buying prices in the market.

But, presumably, under pressure of severe competition they might look to a manufacturer for relief. And it is true, of course, that sometimes manufacturers and wholesalers, both, do try to assist distributors, retailers, in putting on specials.

They look around for perhaps a good collection of merchandise that they can use for purposes of specials. I think it is not impossible that, in a given situation under a play of pressure, that a manufacturer sometimes might have been forced to face up to this question, whether he might be forced to deteriorate the quality of his product to meet a given pressure in the market. But my guess is that it is highly exceptional, and that most manufacturers would resist this type of pressure.

Please remember that this type of pressure comes from the individual market -- not from the total market at any given time. It arises here and there, depending upon the play of local competitive factors.

I would not think that a manufacturer, in reaction to pressure arising from a given local market, would really be forced to deteriorate [products] for that purpose, particularly national brands, which are the ones likely to be used as leaders. He wants to maintain their position and their reputation in the market."

On the same subject the Canadian Association of Consumers stated that they had noticed no deterioration in the quality of those goods particularly subject to active price competition. Price competition on items which were formerly price maintained, in their view was still so sporadic that there was little reason for any deterioration, and in any case it was said that retail competition should not affect the quality which the manufacturer builds into his product to meet the competition of other manufacturers (p. 1743).

A development at the retail level, portrayed in much the same way as the alleged decline in the quality of goods produced by the manufacturer, was said to be that the customer was persuaded to buy less well-known, inferior articles at higher prices or wider margins for the retailer (p. 572) because the latter would not obtain the same profit in the highly advertised lines (p. 2655). It was also argued that the abolition of resale price maintenance had encouraged the operations of "shoestring" manufacturers who did not make provision for spare parts or servicing, because the reduction of margins on known brands made it attractive for merchants to stock

unknown merchandise (p. 3090). The actual situation in the manufacturing field appears to be that new manufacturers were attracted when and because a sellers' market existed. In the food field, further disadvantageous effects for the consumer were stated to be produced by the pressures of loss-leader selling which led the retailer to resort to misleading practices such as charging different prices for the same product in the same store, trimming meat deceptively, mixing qualities of meats (p. 2406) and mixing sizes of oranges, etc. (p. 3589). It is difficult to see the consumer being deceived on any scale by such devices or continuing to patronize dealers engaging in them. The B. C. Retail Hardware Association said that a questionnaire had been sent to members asking if loss-leader selling had forced them to discontinue selling standard brands and to substitute inferior products to meet this competition, and 65% of those replying said this was the case (p. 3021). Leaving aside the possible bias implied in the wording of the question, other evidence suggests that the consumer is not quite so easily deceived as this would indicate. One large retailer of appliances said that while his firm encouraged customers to buy more expensive articles than they had intended when they came into the store, no attempt was made to steer the customer away from advertised bargains because this would antagonize him (p. 647). A member of the delegation of The Retail Merchants' Association of Canada, British Columbia, said that his firm had tried to switch customers from Canadian General Electric polishers to other polishers, which carried the same price but provided a wider margin. It was said that the attempt was not very successful, however, because Canadian General Electric products were so well-known and so highly respected that switching was difficult (p. 2774).

Another witness said that if loss-leader selling continued, the retail hardware dealer would have no alternative but to meet this competition by attempting to market poorer quality merchandise. He stated that products like toasters, irons and clocks had been successfully substituted for better known brands, but it was conceded that a retailer would have considerable difficulty in substituting other merchandise if it was definitely inferior (p. 3718). In general it would seem that even if the retailer wanted to substitute less well-known brands his opportunity to do this to the disadvantage of the consumer would appear to be very limited, as most retailers recognized. The fact that a brand is well-known establishes that there is large public acceptance of it and that it is sought out by consumers. If the retailer was successful in substituting an unknown brand, the qualify of which was not inferior, the benefit to the consumer would not be dissipated. If the substituted product was actually inferior, an inability on the part of the average buyer to judge values must be presumed when it is suggested that a business could operate successfully for very long, using this device in competition with other retailers offering quality merchandise at low prices, backed by the advertising power of well-known brands.

The views of those appearing before the Commission on the general question of the extent to which the public benefits from flexible pricing at the retail level, ranged through a wide spectrum. It was represented by Drug Trading Company Limited that price-cutting never broadens the market (p. 342). Another witness said that real benefit to the consumer comes from inventions and technological advances and that price-cutting brings only temporary bargains to relatively few people in widely separated areas (p. 3483). Other witnessed referred to the alleged discriminatory effects of bargain prices on the ground that they were said not to be available to rural buyers and others (pp. 3484, 4156). The Allied Beauty Equipment Manufacturers' & Jobbers' Association argued that the public could not benefit from price reductions on the products of this trade, because they were sold only to beauty parlour operators, whose minimum charges were fixed by law in most provinces, and because the cost of the products used was of very little importance in the charge made by beauty parlours for their services (pp. 1683, 1686). The Association conceded, however, that most beauty parlour operators worked on a price schedule above the minimum (p. 1706) and also that beauty parlour operators would have to increase their charges if their general costs rose (p. 1722).

Another group of witnesses held the view that some benefit to the consumer might be expected from flexible pricing at the retail level. It was the opinion of the B. C. Retail Hardware Association that price reductions would widen the market (p. 3078). The Canadian Retail Hardware Association said that some consumers have undoubtedly secured some bargains in brand name merchandise as a result of loss-leader selling (p. 3660). The Radio-Television Manufacturers' Association of Canada admitted that the discount houses might have had the effect of temporarily broadening the market, but stated there was not enough experience to say whether this would be the long run effect. They submitted that the vital question was whether the lower price became the established pattern, because it was obvious that anything which held down the general level of prices, while still permitting those in the trade to make a profit, would broaden the market (p. 1835). Some witnesses expressed the opinion that the discount houses had benefitted consumers by bringing to them brand name products at low prices (p. 777), and that many people who otherwise would not have bought, had obtained appliances at lower prices (p. 792). It was the view of the Canadian Association of Radio & Appliance Dealers (Victoria Branch) that the ban on resale price maintenance had resulted in lower prices to consumers (p. 2580). One large retailer of appliances said that, aside from the matter of adequate service, the public without doubt got the benefit of competitive price reductions (p. 765). The question of the adequacy of service on appliances was raised by a large number of witnesses and is discussed in a subsequent section. The Canadian Association of Consumers expressed the opinion that the reduction of regular prices through lower costs of retailers buying in large quantities, greater volume of sales, or low overhead methods of operations not

only benefitted consumers but operated as a challenge to the trade (p. 1735). It was suggested that if other forms of competition had as much appeal for the consumer as price competition, there would be no occasion for business groups seeking protection from it. The fact that no voices were raised to ask for protection from competition in service or quality suggested that consumer patronage was not so easily deflected by these means (p. 1747).

Another aspect of this question was raised by several witnesses, including one who said that any benefit to the consumer from lower prices should not be a decisive consideration when the legislation had caused the sacrifice of the merchants' legitimate profit (p. 1417), and another who conceded that the lowering of prices did broaden the market and permitted the man who could not otherwise afford it, to buy a refrigerator, but argued that he was not entitled to this benefit, if the effect was to put six or seven dealers out of business (p. 580). These views almost amount to the contention that a retailer has some proprietary right to be kept in business. They were answered by the argument of the Canadian Association of Consumers that consumers have an indisputable right to the only protection against exploitation which they possess, unless resort is had to government control, namely free competition (p. 3918).

(c) Alleged Danger of Monopoly Prices

In nearly every presentation made to the Commission by those who regarded the current forms of sharper price competition as indicative of loss-leader selling or who advocated the restoration of resale price maintenance as a solution to the present difficulties of some retailers, the justification for interference by the Government on the grounds of public interest was in large part ascribed to the possible danger that free competition in the sale of branded goods would lead to concentration of business at the retail level in the nature of local monopolies in some lines. Support for such representations was frequently sought in the conclusions of the MacQuarrie Committee to the effect that the loss-leader device was a monopolistic practice which did not promote general welfare and was not compatible with the public interest. However in the discussion which follows, the almost complete lack of evidence of selling below acquisition cost should be borne in mind, as well as the extent to which different witnesses believed that varying degrees of price competition represented loss-leader selling.

A representative of the Sunbeam Corporation (Canada) Limited contended that in the case of certain types of branded or durable goods, price competition would lead to a merchandising monopoly because dealers with higher costs of operation could no longer afford to handle the price-cut merchandise (p. 54). The Sunbeam representative thought that there was serious possibility of

harm to the consuming public in the long run from such a situation. The Sunbeam Corporation was not able to furnish any statistical information as to number of dealers or their sales, as the Company did not deal directly with retailers, but distributed its products through wholesalers who, in turn, served the individual retailer. The tendency toward monopoly as a result of price-cutting, in the view of the Sunbeam representative, had been carried farthest in Toronto, where there had been a marked increase in the sales of one particular dealer (p. 88). Under resale price maintenance, it was said, Sunbeam had at least 1,000 dealers in the Toronto area. The bulk of these were no longer interested in handling Sunbeam Mixmasters and the largest part of the business was being conducted by some five dealers (p. 99). It was clear from his presentation that the price competition he had in mind would embrace much more than the practice that the MacQuarrie Committee had in mind when it referred to "the loss-leader device", and in fact the linking of a tendency toward monopoly, merely with competition in price rather than loss-leader selling was a feature of many of the submissions on this question.

The representations made to the Commission about the danger of monopoly in retailing were largely concerned with the electrical appliance trade although the retailing of food and cigarettes was also alleged to be affected by this development. The Canadian Wholesale Hardware Association argued that continued loss-leader selling would force hardware dealers out of business, thus eliminating competition, and would eventually result in the consumer paying higher prices (p. 453). It was argued that a dealer should not be permitted to sell refrigerators at a lower price based on large volume, because this would concentrate business in the hands of a few dealers who were primarily interested in turnover rather than building up goodwill, which was said to be detrimental both to the trade and to the consumer (p. 515). Again no factual evidence was submitted in support of this argument, and in fact the hardware trade is among the most stable of retail trades from the viewpoint of business failures. The Canadian Electrical Manufacturers Association said that the prohibition of resale price maintenance assisted in the creation of monopolies because it meant that business was falling into the hands of a few large dealers (p. 922). It was argued by Northern Electric Company Limited that the result of predatory price-cutting, which was said to be spreading at an alarming pace, was an accelerating rate of failure among the smaller retailers and the concentration of appliance retailing into fewer and fewer monopolistic channels (p. 1537). The available statistics on failures in retail trade will be reviewed later in this report. The British Columbia Division of The Retail Merchants' Association of Canada said that when a retailer took a product unrelated to his main line of business and used it as a loss-leader in order to attract traffic to his store, other retailers would gradually have to abandon the line, and its sales would be concentrated in the hands of the retailer using it as a loss-leader. If this happened on a big enough scale, and the retailer had not been taking a profit on

the line, he would either have to abandon it too, or increase his price (p. 2708). The B. C. Retail Hardware Association argued that loss-leader selling was causing financial difficulties for many neighbourhood merchants upon whom the public depended for convenient service, and the public would be deprived of the services of these retailers if they were unable to survive. In the end the firms using loss-leaders would gain complete control of the price structure and would then raise prices to the detriment of the public (p. 3016). The Canadian Retail Hardware Association submitted that loss-leader selling would result in concentration of business in the hands of a few dealers, who would then be in a position to establish retail prices subject only to the competitive influence of imported goods (p. 3664). The fact that some members of the Association had greatly reduced their stocks of brand name appliances was submitted as an indication of the concentration in progress (p. 3721). The above may be said to be representative of the views expressed to the Commission alleging the possibility of the retail electrical appliance business becoming concentrated in the hands of a few dealers. An argument which was somewhat self-contradictory was advanced by several witnesses, to the effect that price-cutting retailers were opportunists who could not be regarded as having stability or permanency, but at the same time their activities would result in the elimination of more stable trade elements and produce monopoly situations (pp. 1057, 1625, 2432).

There is evident in some of the opinions just referred to, a tendency to regard the possibility of a reduction in the number of outlets as equivalent to a reduction in the desirable degree of competition and in fact one witness went so far as to suggest that lower prices always prevailed when more people were in business (p. 2743). Other witnesses took a somewhat similar position. One said that in the long run, loss-leader selling would reduce competition by cutting down the number of outlets (p. 553). Another said that the Government must make up its mind to afford protection to the small merchant or have the public run the risk of having him put out of business, with the result that a virtual monopoly would exist in the hands of the large retailers (p. 602). Another witness said that the legislation prohibiting resale price maintenance would create monopolies by eliminating the independent merchant (p. 1435). With reference to these arguments the Canadian Federation of Agriculture stated that even if there was a tendency towards fewer dealers, larger in size, with lower markups and fluctuating prices, it was not a move in the direction of monopoly. On the contrary, the banning of resale price maintenance was a move away from private price fixing and lack of competition to a freer market. Grocery chains and large mail order houses have been in business for a long time but the Federation did not see any sign of monopoly in their activities and expressed the opinion that competition among them was very keen. Since existing large retail organizations were competing with one another there was no reason why the situation should be different in the electrical business, if appliances, to be a greater extent, came to be sold by large appliance stores (p. 3948). While somewhat

apprehensive of some current developments in retailing, the British Columbia Division of The Retail Merchants' Association of Canada did not foresee the outcome as one of monopoly. This Association did not believe that efficient retailers would be driven out of business by the ban on resale price maintenance, and a survey of the causes of business failures in Canada as reported in The Financial Post was referred to, in which lack of experience, incompetence and neglect were given as being by far the most important reasons for failure. The Association said that efficient independent merchants would remain in business as long as anyone else, though they might be driven out of handling certain lines as a result of price-cutting (p. 2742). This perhaps is what is occurring to some extent in connection with the sale of electrical appliances in the hardware trade, which because of a normally slow rate of turnover, requires a somewhat higher margin than other trades handling some of the same products.

However, what appears perhaps to be the greatest safeguard against the danger of monopoly situations arising in merchandising, comes from the ease of entry into the retail trade as well as from the ability of merchants to adapt themselves to changing conditions. The British Columbia Division of The Retail Merchants' Association of Canada, also referred to these aspects (p. 2741):

> "Unfortunately the public believe that retailing is a field into which anyone can get, and the fact is that that feeling on the part of the public is not borne out by the facts. It takes a considerable amount of skill to be a substantial retailer.
>
> THE CHAIRMAN: Well they can get in.
>
> MR. DEACHMAN: Oh yes they can get in -- it is easy to get in. There is nothing like it. It is one of the few places everybody can get in. But once you do get there it is quite a different situation. The bright ones stay with it; the less bright ones perish."

These considerations were also referred to by Dean Grether in the following terms (pp. 3285-3287):

> "In the third place, it is sometimes argued that the use of loss leaders is a practice that can be employed best by the larger organizations; and that, as a consequence of this application, a quasi-monopoly position or even a monopoly position, may be created in retailing trade marketing channels; and that therefore it would be an excellent idea to prohibit the practice in order to protect the consumer and the public against the building of these quasi-monopoly positions.
>
> Now, please recall again my general position, that it is very difficult, except arbitrarily, to dissociate or to segregate the use of leaders from price competition and promotion of

merchandise in general.

In the second place, at least in the United States -- and I assume it is true here in Canada also -- retailing is one of the most competitive parts of the economy. In fact, it is probably just about the most competitive segment of the economy. It is very difficult, if not impossible, to obtain and to hold a monopoly position in a given retail market. It is so easy for new entrants to come in, that anything that tends to look like a monopoly position becomes threatened immediately by new competition.

Then, in addition, competitors always have other alternatives available to them. Many of us who have observed marketing over a period of years I think will have been impressed by the ability of the marketing system to express itself in a different way as conditions have changed. There is enormous vitality and energy stored up in the free enterprise system, as it expresses itself in the handling of goods and services in our markets. Over the years this monopoly cry has been used almost always whenever a new enterprise became important. No doubt some of you have read of the cry at the end of the last century, and early this century when it was used against the department stores -- arguing that they would soon have a monopoly of retailing in our market. Department stores have never achieved such monopoly.

Then, it has been used against chain stores. It is used against super markets, to some extent. In some foreign countries it is used against consumer co-operatives.

In other words, any new competitor who shows signs of vitality and strength becomes attacked as a threat to competitive marketing -- a danger because it is called a quasi-monopoly situation.

In terms, at least, of my observation, I do not see any strong threat, in terms of quasi-monopoly potentials in the use of leaders and loss leaders in our markets."

The danger that monopoly situations in retailing might arise in another direction was referred to by one witness who suggested that continued price-cutting might drive manufacturers into opening their own retail outlets, in which case prices to consumers were likely to be higher (p. 2826). Professor Mund expressed the opinion that the possibility that manufacturers in Canada, in the absence of resale price maintenance, might establish their own retail outlets, was not justified by past experience in other countries. In the United States, for example, there had been no indication that manufacturers had sought to develop their own retail outlets in the states which have no "fair trade" laws. Professor Mund said that it

was the manufacturers' job to manufacture, to develop and to innovate, and he doubted that they would wish to take on anything further (p. 3258). At the annual meeting of the Canadian Electrical Manufacturers Association as reported in the Radio, TV and Appliance Trade Builder for October, 1954, the President of the Association expressed a somewhat similar view on this matter:

> "QUESTION: Do you think some manufacturers might consider going direct to the public as a result of the present chaotic conditions by operating their own retail stores as some laundry equipment makers did some years ago?
>
> ANSWER: From time to time in the past, manufacturers have explored the retail selling field although the final conclusion has usually been that it should be left to specialists. However, it could be that if the present conditions continue, the possibility might be studied more intensively by some manufacturers."

Another argument which was advanced as indicating a tendency toward monopoly under conditions of price competition in the sale of branded goods was that the legislation prohibiting resale price maintenance had encouraged large-scale merchandising organizations to push private brands, since there could be no price-cutting on these items. Anything which encouraged the growth of these privately controlled trade-marked lines would tend toward a merchandising monopoly, with consequent detriment to the public (p. 58). This argument fails to take into account a number of significant factors. In the first place, the trade position, in practically all cases, is that private brands are in very real competition with nationally advertised brands with far greater public acceptance. As the latter, in the circumstances suggested, would be selling for relatively low prices, it is difficult to believe that any significant increases in the sale of private brands could be made under such competitive conditions let alone increases so large that they would create a monopolistic situation. Secondly, under resale price maintenance, there is an obvious advantage to sellers of private brands, since they are assured that their competitors must sell national brands at the maintained price, while the former are free to expand their sales of private brands by pricing them under the national brands which is generally done. Finally, in the electrical appliance field, most of the evidence received by the Commission indicates that it is not private-brand sellers like the department stores which are offering the most aggressive competition, but rather the large scale independent merchants, who are not big enough to make use of private brands, and who concentrate their efforts on the sale of nationally advertised goods.

Although The Retail Merchants Association of Canada Inc., did not contend that at the present time there was any large scale loss-leader selling, the spokesman for the Association foresaw a merchandising war arising within the next year or two, between large

department and chain stores on the one hand, and independent stores on the other (pp. 3518 - 3519). In his view the chief instrument used by the large organizations would be loss-leader selling. No evidence however was adduced to support this view. On the other hand, one of the larger independent retailers of electrical appliances in Montreal said that the big department stores, if they decided to go into a price-war, could probably sell at prices far below his cost, and because of their great resources of capital, force him out of business. However, they were not doing this and he did not think they would (p. 1799). In this connection Dean Grether has written:

> "If there were no competitive checks on the pull of leaders, then the inevitable consequence would be the gathering of all retail lines in the hands of one firm in each market. This outcome was feared at one time by small dealers in competition with department stores and mail order houses. Fortunately for the specialists, the limits to the economies of wider assemblage seem to be reached rather early. The larger department stores, for instance, are relatively high cost institutions. In recent years many of them have dropped the use of deeply cut leaders, presumably because they were not profitable.
>
> In the business of retailing goods there appear to be only slight, perhaps no economies of larger scale operation when a firm grows beyond moderate size. Consequently expansion quickly reaches a margin of application in the use of leaders <u>without price increases</u>, even if there are no specific competitive resistances. This margin of application of leaders is where the net loss on them equals the net gain obtained from the extra sale of other goods induced by the leaders. Competitive repercussions normally may be expected to ensure that this margin will be achieved short of the position where all latent economies are exploited because of the diminished effectiveness of leaders. Thus in the intrinsic nature both of retail merchandising and of leader practice there is no basis for the assumption that leaders make possible the exploitation of significant unutilized economies of large scale operation."

(E. T. Grether, "Price Control Under Fair Trade Legislation", pp. 220-221)

(d) <u>Availability of Adequate Service</u>

A point which was frequently raised during the hearings by trade representatives, who saw possible disadvantages to consumers in open price competition among retailers in the sale of the same branded article, was the maintenance of adequate service if margins were reduced below the levels which manufacturers considered necessary, as indicated by their suggested retail prices.

One opinion expressed was that whatever saving the consumer might obtain in buying a branded product at less than the suggested retail price was more than offset by the inadequacy of service at the time of purchase, or at a later date when service became necessary. This point of view was particularly evident in discussion of the sale of electrical appliances, but the same views were expressed in regard to the distribution of some other lines of consumer durable goods. It was said that if public confidence was damaged because essential service was lacking, this would reflect upon the industry, which would not then be able to compete successfully for the consumer's dollar in the sale of its products (p. 598). Several aspects of the alleged decline in service were referred to. It was argued that the large volume, low markup retailers could not and would not provide adequate service out of their narrow margins. It was argued further that the traditional type of retailer who emphasized service could not operate on such low margins while continuing to supply service. Finally it was argued that price-cutting was forcing a significant number of retailers out of business and that service would no longer be available to the public from them. Before an examination of these factors is undertaken, it might be well to place the problem in perspective by considering the amount of service which is involved in the sale of electrical appliances and the arrangements normally made by the trade to provide it.

In the brief of the Canadian Electrical Manufacturers Association, the responsibilities of the retailer in the matter of service were referred to in the following terms (pp. 910-911):

> "The services performed by a dealer which require adequate margin[s] are:
>
> 1. Maintains a varied display of models.
>
> 2. Maintains an adequate inventory of various models to make prompt delivery.
>
> 3. Has a trained sales staff to supply information on the product to customers, enabling them to make an intelligent choice of the model best suited to their requirements.
>
> 4. Has a location in a good traffic centre with an attractive store and windows properly displaying products.
>
> 5. Provides facilities to uncrate, test, clean and set up products and to deliver them to the customer's home, install them, and instruct the customer in their basic operation.
>
> 6. Has a home economist or other staff personnel to call at

the purchaser's home and educate the housewife in the proper use of the product to get the most value, enjoyment and the best results from owning it.

7. Accepts the responsibility to promptly adjust the product to ensure its continued and satisfactory operation in the customer's home. This is an important responsibility of the dealer who sold it and represents a substantial expense in equipment, supplies, space, trucks, parts inventory and trained service men.

8. Does advertising to educate the public as to the benefits, features and prices of the products, and savings resulting from their use.

9. Undertakes sales promotion activities of various types, for example, cooking demonstrations and distribution of literature."

It will be noted that this list includes promotional as well as service activities and stresses those functions which aid most directly in expanding the manufacturer's sales in addition to helping the consumer to get the most satisfaction from the article purchased. This raises the question of the extent to which the retailer now performs the function of promotion, as well as providing the kind of service the consumer may want, and the further question whether it is necessary to provide for the cost of all possible service in the margin afforded the retailer rather than giving the consumer the choice of paying for it when required. Questions of this kind were considered in a paper delivered by Professor R. S. Alexander of the Graduate School of Business, Columbia University, at a meeting of the American Marketing Association held in Detroit on December 27, 1954. In discussing the theory of price maintenance Professor Alexander said:

> "In the second place, price maintenance is based on the idea that all retailers should be paid in their gross margins for these functions whether they perform them or not and that all consumers should pay for them whether they want them or not. This assumption was further extended to include the idea that the margins of all retailers should include the same standard amount to cover the costs of performing these services regardless of what their actual costs of doing so might be. One added assumption is involved, namely that all consumer-buyers need these services performed for them whether they know it or not."

Professor Alexander then went on to discuss whether such a view is valid under present market conditions, and stated:

"The manufacturer has taken over and now performs the lion's share of the task of promoting the sale of his product and he is constantly assuming a larger portion of it. Practically all national advertising is directed to this end."

In reviewing the retailer's function in the sale of branded merchandise, Professor Alexander pointed out:

"The retailer's function as a source of assurance of the quality and performance of the articles he sells is much less important to both the maker and the consumer-buyer than it used to be.

The retailer has become less important as a source of the repair and maintenance service needed by many mechanical contrivances than he once was. Most makers of such articles issue detailed and carefully prepared sets of instructions as to the care and use of their merchandise; these are transmitted to the consumer-buyer along with the goods when they are sold and serve to reduce the need for such service. There is a constant drive to make mechanical articles more foolproof in operation which likewise reduces this need. Many manufacturers maintain repair stations in the chief centers of population to which consumers can take or send articles to be repaired or from which crews of repair men can operate to make such repairs. Many of them also are prepared to do the work of installation which may be required by new buyers of their products."

Very much the same view was taken by the Canadian Association of Consumers whose opinion was that most consumer durable goods of the type requiring servicing have reached a high order of dependability in performance and do not ordinarily require servicing for long periods after they are bought (p. 1745). The representative of the Association expressed the view that, generally speaking, a very small number of consumers took advantage of the services which were included in the sale price of appliances. Most of them, she said, did not bring the appliance back to the retailer unless it was defective to begin with, which of course would be exceptional, and this was not regarded as the type of service for which a charge might be included in the selling price (p. 1760). Usually, most consumers did not need to turn to the store for service until a year or more had elapsed, by which time they had forgotten whether or not the purchase price included servicing, and felt they were getting a favour from the retailer if they obtained service for nothing. The Canadian Federation of Agriculture argued that consumers do not always know just what service they are entitled to after buying from a service retailer, and that the amount of service the purchaser gets sometimes depends on his insistence (p. 3960). It was the belief of the Canadian Association of Consumers that the average housewife, particularly if there was a service depot nearby,

preferred, in many cases, to call in the local service man to repair or service electrical appliances. It was argued that in any case free service was not always available except from very large retail organizations, which were exceptions to the general rule, in that the majority of people buying from them were likely to turn to these stores first for service (p. 1760).

With respect to demonstration services referred to by the Canadian Electrical Manufacturers Association, it was said that consumers were about equally divided on the acceptability of home demonstration of a product, some liking it and some not. Those who did not like it felt they were being "high pressured" and manoeuvered into the position where, for example, having had a carpet cleaned, they would feel they owed something to the company sponsoring the demonstration (p. 1762). The Canadian Association of Consumers concluded that the average consumer preferred to pay a lower price for an appliance without service, with the privilege of paying an additional amount for service, if desired (p. 1761).

There was a considerable difference of opinion in the views presented to the Commission about the amount of service which the average appliance would require during the various periods normally covered by free service from service retailers. However, it was generally agreed that there would be a substantial proportion of each type of appliance that would require no service at all during these periods. Therefore, with respect to those products not requiring service, it would not have mattered to the purchasers where they had bought them. With respect to those requiring service, some would be taken care of by the service facilities supplied by the manufacturers. It is standard practice for manufacturers to guarantee the parts of the appliance against defects in workmanship or materials, regardless of where the appliance is sold in Canada. The evidence presented to the Commission indicated that in the larger metropolitan areas, at least in Toronto, Montreal and Vancouver, many manufacturers of white goods, e.g., electric stoves, refrigerators, dishwashers, etc., provide direct factory service to consumers, so that not only the parts but also the labour involved in any repairs were the manufacturer's responsibility. One witness said that some manufacturers of such things as refrigerators, ranges and washers would not even sell any merchandise except on the condition that they retained responsibility for guaranteeing the parts and for the service warranty. When a customer's complaint was received by the retailer, the retailer referred it to the manufacturer who sent his own service representative to see the customer (p. 678). In some cases, it was said by another witness, where a manufacturer did not have his own direct service in the area, he employed a service company to take over responsibility for the manufacturer's warranty (p. 789). Another witness said that in Montreal, one manufacturer maintained direct factory service on every product he sold, including washing machines, refrigerators, stoves, dishwashers, and home freezers (p. 1780). The same manufacturer had

a schedule of service charges, depending on the article, which ran from $2.00 to $9.50 for one year's service, which was added to the dealer's cost price. These services were optional, so that the customer paid for them only if he wanted them. Another manufacturer, who was principally interested in ranges and refrigerators was reported to have a service policy which automatically covered all of his products, at a cost to the dealer of $6 or $8 per unit, if the retailer adopted this arrangement. If he did not, the retailer then supplied his own service (p. 1781). In the case of automatic washing machines, it was said to be a general rule that all manufacturers included a certain charge in the cost price of the appliance to cover service, and all installation, guarantee, demonstration and servicing was undertaken by the manufacturer, when sales were made in a metropolitan area. For sales in other areas, the manufacturer refunded the service charge to the dealer, who in turn deducted it from the customer's purchase price (p. 1784).

In the case of television receivers, it is standard practice for manufacturers to guarantee the picture tube for one year and other parts for 90 days. At one time, service was generally included in the selling price of television receivers, but the evidence presented to the Commission indicates that it is now a common practice for a separate charge to be made for a service policy. Some full-price retailers still provide free service for 90 days (pp. 624, 3698), at least on some lines of television (p. 703), but many retailers of television receivers offer the customer a choice between buying the retailer's or the manufacturer's service policy and purchasing the set without any service (pp. 659, 1785). Some small dealers who have no service facilities turn over service calls to service companies, who are service specialists and not retailers (pp. 662, 743). Although television manufacturers' direct factory service appears to be limited largely to the metropolitan areas (p. 2583), factory service depots are maintained by some companies in other large cities to assist dealers who meet problems beyond their experience (pp. 1813, 1825).

In summary, the information presented to the Commission on the question of availability of service indicates that with regard to appliances, service actually required by the consumer is more limited in extent and nature than was asserted by a number of trade representatives; that some proportion of appliances rarely require service of any kind until after a considerable period; and that the service facilities of manufacturers and service companies are available to augment those of the retailer, at least in the metropolitan areas where the lowering of retailers' margins was most noticeable.

Nevertheless there were a number of witnesses who argued that the large retailers who featured price reductions of appliances were operating on such a small margin that they were unable to provide proper service under the terms of the manufacturer's guarantee (pp. 726, 766, 1572, 2540, 3017). There was, however, some conflict between these opinions and those of the large retailers

and of some manufacturers. The Commission heard representations on this subject from at least one of the larger dealers in each of Canada's three largest cities. In Toronto, a large retailer stated that when he sold any article, the price included service and no extra charge was made, except in the sale of television receivers, where an extra charge was the general rule (p. 659). The retailer operated a service department which even in the slack period employed six servicemen for products on which the service was not provided by the manufacturer (p. 662), though it was said that manufacturers' factory service was available on most articles (p. 658). In the matter of service on television sets, the customer was given a choice. He might pay $20 for three months' service, or $10 for the first 30 days, or he might not buy any service at all. In the last case the television set would be delivered to his home and guaranteed to be in working order, after which the retailer would provide one service call free, but charge $4.75 for each additional call (p. 661). Approximately half of this retailer's sales of television receivers were made on this last-mentioned basis (p. 663). Under the $10 service policy there was no fixed number of calls that might be made within the 30 day limit, but if too many calls were received, the set would be exchanged for another (p. 662). In the case of white goods, the manufacturers' direct service was available only in the metropolitan area of Toronto, and this retailer said the manufacturers he represented had told him not to sell outside this area, because they would not be responsible for service (p. 679). However, sales were made within a 40-mile radius of Toronto and the retailer himself assumed responsibility for service outside the metropolitan area.

A retailer in Montreal, who sold appliances on a large scale with low markups, explained that he gave the customer three choices in the purchase of television sets: the customer could buy without service, he could buy the retailer's own service contract for $15, which entitled the customer to unconditional service for three months, regardless of the number of calls, or he could buy the manufacturer's service contract at a somewhat higher figure, in which case the servicing was done by the manufacturer's direct factory service, where this was available, or by independent service companies hired by the manufacturer (p. 1785). Some other products were not covered by any free service, and the customer was required to buy either the manufacturer's service contract where direct service was available, or the retailer's own service policy, under which servicing was done by an independent service organization hired by the retailer (pp. 1784, 1798).

A large retailer of appliances who appeared before the Commission in Vancouver claimed to have the best service department in that city (p. 3158). He delivered major appliances free within a hundred-mile radius of Vancouver, and beyond that distance only the extra freight was charged. Small appliances were mailed to any point in British Columbia for a 50¢ shipping charge (p. 3160).

Appliances such as automatic washers were installed without charge within the hundred-mile radius, and beyond that a refund was made to the customer to cover the cost of installation, which might be $12 or $15 (p. 3161). Free service was provided for a fixed period by this retailer on all appliances except television, for which a separate charge was made (p. 3159). This, he said, was now the practice throughout the United States and Canada. He argued that 42% of his business consisted of repeat orders, which proved that the service he provided was considered by his customers to be satisfactory.

In the face of these statements and those of a number of other large retailers of appliances, it would be difficult for the Commission to conclude that those retailers who operate on narrow margins are in fact misleading the public by failing to perform the essential services which customers have been led to expect. In this connection, a member of the delegation representing the Canadian Electrical Manufacturers Association said that most dealers advertising at reduced prices gave pretty good service in the large metropolitan areas (p. 961), and in the representations made by the Northern Electric Company Limited, it was said that under present conditions, the last thing the price-cutter would eliminate was the servicing of appliances, because this would strike home to the consumer first (p. 1570). The Canadian Association of Consumers stated that very few complaints had been received by the organization about servicing in the electrical appliance field, and most of those that were received related to implied service in the purchase of television receivers. It was suggested that if there were serious shortcomings in regard to service generally the Association would quickly have heard of them (pp. 1748, 1770).

A number of witnesses argued that a second way in which the consumer was detrimentally affected in this matter of service was that the traditional type of appliance retailer could not remain competitive while continuing to supply service. For example it was argued by one witness that cut prices precluded the possibility of adequate service by "legitimate" dealers who had to make some price-cuts to meet competition (p. 730), and in other representations that customers looked unfavourably on merchants who failed to meet competitive prices, but that where there was too small a markup, service could not be given (p. 2660). Several witnesses referred to service departments being a direct charge against the business of the firm, or they referred to the larger markup required to provide service (pp. 623, 1635, 2458). Other expressions of opinion referred to some of the more intangible aspects of service. For example, one witness said that established dealers had always to consider their reputation with customers, while price-cutters were transient sellers and did not have to be concerned with this (p. 557). Another said that low markup retailers in large cities were taking customers away from dealers in small towns who had educated the customers and needed a wider margin than large volume retailers (p. 987).

In view of the fact that representatives of consumers did not report buyers' complaints about inadequacy of service, it would not appear that any lack of essential service facilities had been experienced so far. That adjustments may be made in the nature of services offered by retailers without separate charge is not unlikely. Many instances of this kind may be found in lines of retailing other than the distribution of electrical goods. It may also be the case that retailers will have to appraise their service operations much more closely and decide to what extent they are warranted in maintaining customary service functions and facilities. Adjustments of this kind must be expected in a dynamic economy, as the buying public by its patronage indicates the nature of the services it wishes to have. It appeared to be the general opinion that, for some years after the end of the war, entrance into the appliance business was relatively easy and that in most cities there had been a substantial increase in the number of appliance dealers. A rapidly expanded trade would be subjected to a test by the change from a sellers' to a buyers' market, but there was no indication that such changes in numbers were occurring as to create any real difficulty for consumers in finding a convenient store. It is possible that some retailers have discontinued handling appliances, but this is not likely to create any appreciable gap in the service facilities available to consumers. Again it would seem that it is primarily in the metropolitan areas, where the greatest number of alternatives is available to customers, that full-price retailers have been most affected by price competition. Furthermore, if need for additional service should arise in the future there would not appear to be any reason why this need would not be met by the growth of specialists in the service field or by retailers emphasizing service. Similarly, with regard to the argument that if retailers should discontinue selling appliances the consumer would be inconvenienced by having to go out of his own neighbourhood to satisfy his needs (p. 3016), it would be expected that if there were enough consumers willing to pay extra for the convenience of neighbourhood service, there would be no reason for the retailers to discontinue handling appliances.

When the question was posed in the course of the hearings to witnesses from the trade as to whether or not the consumer should have the right to choose between one retailer offering limited service and a low price, and another retailer offering more extensive services and a higher price, a number agreed that this should be his right, though it was argued it would involve a number of difficulties (pp. 3538, 3692). Only one witness said that the consumer who wanted to take a chance by buying without service should be protected from making this decision because he knows nothing about appliances (p. 620). Even this witness did not really wish to deny the public the right to buy at a low price with no service, but thought the result would be disastrous if all retailers sold in this way, because he felt that public confidence in appliance retailers was already low and presumably would go lower if no free service was available, even though the customer knew the price he had paid did

not entitle him to it (p. 627). Similarly, another witness argued that, if the practice of offering goods with or without service became common, chaos would be the result, because the consumer would always choose to buy at the lower price which did not include service, without thinking of the time when service might be needed (p. 3701). Others suggested that the product and the services incidental to its sale and operation form an integral part of the commodity which should be inseparable in any sale. It was contended that this argument had force with respect to television receivers because the public was so insistent about service, and because there were so many things which could upset the operation of a television set (pp. 747, 930). Nevertheless, it is in this field that the most marked steps have been taken to provide separate service contracts for buyers.

Another witness argued that limited service was practical only in metropolitan areas, where, because of the large market, advertising power might enable a dealer to ignore service, whereas, in a smaller town, a dealer who got a reputation for poor service could not operate successfully (p. 3708).

It was argued by The Ontario Association of Radio-Television & Appliance Dealers Inc. (p. 748), among others (p. 774), that the manufacturers of appliances should introduce new dealer franchises which would require retailers to provide a minimum amount of service and creative selling effort. The Association also indicated that it thought manufacturers should require dealers, when they advertised, to inform the public whether free home service was provided with the purchase of television receivers (p. 746). If there should be cases of misrepresentation about the service that a dealer provides in connection with the sale of a particular manufacturer's product, or if a dealer should fail to provide the type of service that a manufacturer considers necessary to secure the effective distribution of his product, the withdrawal of the manufacturer's franchise might be an effective remedy. There would appear to be nothing in the legislation banning resale price maintenance which would preclude such action if taken for these reasons alone. Representatives of manufacturers, however, thought that there would be many difficulties in applying such a remedy. Manufacturers were doubtful that they still had the right to refuse to supply dealers who were not providing proper service (p. 740). It was argued by several witnesses that the manufacturer was not in a position to deal with retailers who used fraudulent advertising or failed to provide necessary services, because it was difficult to prove that advertising was misleading or that service was inadequate, and a manufacturer who refused to supply a retailer on these grounds would likely be accused of withholding supplies because the retailer was cutting prices (pp. 470, 773, 960). References were also made to the cost of investigation and the possibility that withdrawal of a franchise would involve the manufacturer in a prosecution which would not only be costly, but in which the result might be uncertain because the new legislation banning resale price maintenance had not yet been interpreted by the courts (p. 963).

Undoubtedly there would be problems involved in any course of action manufacturers might take to maintain standards of service and promotion which they considered satisfactory on the part of dealers. It does not appear to the Commission that the difficulties which were described would prevent manufacturers from taking action in situations of a flagrant kind involving misrepresentations or lack of service. In this connection some members of the Canadian Electrical Manufacturers Association indicated that they had in fact cut off supplies to retailers for reasons other than their pricing policies, since the prohibition of resale price maintenance became effective (p. 966). Difficulties of another kind were mentioned by two witnesses who pointed out that frequently there was no direct connection between the manufacturer and the retailer, who might receive his supplies through a distributor, and that disciplinary action taken by a manufacturer or distributor against a retailer, for shortcomings in connection with the sale of one product, might result in the transfer of a large part of the retailer's purchases to another supplier (pp. 471, 963). Finally one retailer said that the problem could not be solved by the manufacturer insisting on a certain level of service or honesty in advertising, because the retailer would not stand for the manufacturer telling him what to do with goods the retailer had purchased. The retailer had only accepted dictation from the manufacturer on price, when resale price maintenance was practised, because it was in his interest to do so (p. 3740).

Representations were also made to the Commission about the decline in the service available to the public in the hardware trade as a result of the price-cutting of certain products. The kind of service referred to, however, generally did not relate to products subject to active price competition but rather to a general accommodation which, it was argued, was provided to customers by hardware retailers. It was said that local hardware and appliance stores rendered many services which could not be furnished by larger outlets - they gave free advice on repairs and decorating, supported community charities and other community activities, and the like (p. 3015). It was argued that large volume sellers, such as supermarkets, whose chief interest was in other trades, did not provide the service of stocking a wide variety of hardware products, which was one reason why they were able to sell fast moving articles at less than the normal markup (p. 458). Hardware dealers on the other hand were obliged to carry as a service odd sizes and types of articles on which there was no actual profit, and it was argued that anything which threatened hundreds of hardware dealers must be suspect, because they provided this service which was not available from the mass market organizations even in those communities which were large enough to support them (p. 1642). It seems reasonable to believe, however, that where there is a demand for such service, there will be no likelihood of the existence of such dealers being threatened. Where the public does not regard the service as useful enough to be willing to pay for it, a change in the methods of operations of some hardware dealers may be required. It was also argued that higher prices than those now current would have to

be charged by hardware retailers, for supplying service on those items which involved service, if other merchandise came to be handled on a low markup basis (p. 3737). If, in the past, some hardware items have been carrying higher margins in order that extra services relating to other lines or general services might be provided without charge, and if, as a result of competitive forces, these items no longer provide wide enough margins to support these extra services without charge, it is difficult to see how the public can be detrimentally affected if those who use the services now have to pay for them, while those who buy the items which formerly carried the wide margins now enjoy lower prices.

In connection with the sale of cigarettes, it was also argued that full-price retailers provided numerous services, such as convenient locations, evening sales, wider ranges of stock, including smoking accessories, advice on tobaccos, credit, delivery, etc., which would be lost to the public if other retailers were to be permitted to continue to sell cigarettes at lower prices. Again, the Commission sees no reason why any of these services would be lost which the public demonstrates it really requires, by being prepared to pay for them.

(e) Development of New Products and Other Aspects

It was argued by a number of trade representatives that the Canadian consumer would not now be enjoying his present standard of living if loss-leader selling, or simply price-cutting, resulting from the abolition of resale price maintenance, had existed over a long period, because the creative selling and promotional effort necessary for the introduction of a new product would not be undertaken by retailers, if they had no assurance that the business would not be taken away from them by another retailer selling at lower prices, once the product had gained general public acceptance (pp. 851, 906, 3662). This it was said would discourage the manufacturer from undertaking the necessary capital expenditures for the development of new products, since he would be unable to obtain from dealers the promotional effort necessary to ensure widespread distribution (p. 906). It was also argued that because of price-cutting on certain lines, the average retailer's margin of profit had become so narrow that he had had to reduce expenses in all his operations, which further discouraged the promotion of new products (p. 915). Support for this view was claimed from the fact that in the United States, in 1953, 56.4% of all washers sold were automatic, whereas in Canada only 12.3% were automatic, and that automatic dryers accounted for 19.3% of washer sales in the United States but only 5.9% in Canada (p. 1066). It was conceded, however, that the automatic dryer was introduced in Canada later than in the United States, but the possible effects of the higher levels of income in the United States, the mass production for a much larger market and the widespread price-cutting reported to exist there, were not explored. Another witness suggested that

there had been no price-cutting on automatic clothes dryers, automatic dishwashers, or garbage disposal units, because these products had not yet gained widespread public acceptance (p. 915). However, it was indicated by other witnesses and in material received by the Commission that such products were being sold by dealers operating on low markups.

A further argument put forward was that price-cutting retailers did no educational sales work whatsoever, but made it difficult if not impossible for conventional retailers who had performed this function in the past to continue in business (p. 928). The typical pattern was said to be that when a new product gained sufficient public acceptance and was taken up by low markup retailers, there was a certain stimulus to sales, but then total sales volume dropped off as other retailers declined to continue the promotion of the product (p. 3662). In the opinion of those holding this view the effect of loss-leader selling was to penalize a manufacturer for having done a good job in the promotion of a new product, because a product had to be well known and widely accepted to be useful as a leader (p. 922), and one witness said that a manufacturer could not be expected to repeat the work of research and promotion which had gone into earlier products, such as that described for the electric floor polisher, because he would be unable to get adequate dealer representation to secure the successful distribution of a new product (p. 3725). On the other hand, one witness, without naming the source, cited the following extract from the report of what was said to be a well known appliance manufacturer (pp. 3801-3802):

> "During 1953 a number of advances were made in the design and production of electrical appliances. Among them were improvements in induction and brazing, spectrographic analysis of materials, the application of stress analysis to component parts and electrical machines and better technical understanding of the performance of bearings and their lubrication.
>
> . . .
>
> Developments in engineering are primarily sparked by a need for maintaining SALES. Protect industry with barriers, control prices and perhaps many a Company would not feel justified in making such gigantic efforts to improve their products and to inaugurate new innovations and to launch costly research programmes."

What is being considered at this point is whether competition in price at the retail level retards the introduction or development of new products to the disadvantage of the consumer. It was generally admitted by those who feared disadvantages of this kind that such fears were fears of anticipation for the future, as there

had been no measurable consequences of this sort up to the present time. These fears appeared to be based to a considerable extent on the need for and successful use of dealer promotion in the period when the first household electrical appliances began to be distributed on a wide scale. The arguments, it seems to the Commission, fail to give sufficient weight to the much larger role the manufacturer now plays in the promotion of his products, and to the likelihood that this role will become even more important. Reference has already been made to the paper delivered by Professor R. S. Alexander at the December, 1954, meeting of the American Marketing Association. As Professor Alexander was speaking of conditions prevailing under the fair trade laws in the United States it is significant to note that even with the protection of such laws, Professor Alexander considered that the retailer's part in the promotion of branded lines is diminishing as indicated in the following extract:

> "The manufacturer has taken over and now performs the lion's share of the task of promoting the sale of his product and he is constantly assuming a larger portion of it. Practically all national advertising is directed to this end. By means of television the producer is able to bring his merchandise into the consumer's living room and in pictures demonstrate how it works and the benefits it can bestow on the viewers. A few evenings spent before the screen will convince even the most skeptical of the extent to which and the assiduity with which he does this. In addition, the manufacturer has found that if he is to have his product featured in local advertising, he must take the lead in bringing this about and must pay most of the bill for doing it. Much of this national advertising in local media also features the name of the dealer. During 1952, manufacturers in the automotive, auto accessories, and equipment business spent about $60 millions in newspaper advertising as against about $47 millions for magazine space. Makers of household equipment and supplies spent about $14 millions in newspapers against $34 millions in magazines; producers of radios, TV sets, phonographs, and musical instruments spent about $9 millions in newspapers and about $10 millions in magazines.
>
> An almost universal complaint among manufacturers is that their retail outlets can be counted on for little more than housing minimum stocks of their products, supplying the most meagre and often unreliable information about them to inquiring customers, and taking orders from buyers who are largely motivated to purchase by the promotion work of the producer. One has only to follow Adventures in Shopping in Sales Management Magazine to realize that the retailer can be depended on to grant only the most rudimentary and often grudging selling effort to the promotional campaigns on which manufacturers have spent millions of dollars. It may still be true that the retailers of most lines of goods handled by discount houses are best situated to promote the sale of those articles, but the fact remains that

a large percentage of them are indifferent to that opportunity and the bulk of the real selling work must be and is being done by the manufacturer."

In view of copies of advertisements submitted to the Commission and other material, it cannot be concluded that no promotional advertising was being done by retailers of electrical appliances, including those retailers who traded on narrow margins. In this connection, The Music Bar Inc., an appliance retailer in Montreal, operating on an average margin of 18% on selling price, is said to have been told that it sells more automatic washers than anyone else in Canada (p. 1799), yet automatic washers were among the products which other witnesses referred to as examples of new products which were in the development stage in the matter of public acceptance, which could only be sold with the aid of considerable promotion, and which price-cutting retailers were therefore not interested in. With respect to the promotion of another new product, namely, air conditioning units, it was conceded by a representative of the Canadian Electrical Manufacturers Association that this was an exception to the rule that the prohibition of resale price maintenance precluded the possibility of obtaining the dealer support necessary to achieve public acceptance of new products, although it was argued that special circumstances were involved in this case, because air conditioning units were distributed largely through the commercial refrigeration field (p. 991). Nevertheless they were also being handled by some of the large volume, low markup appliance dealers. This example also suggests that, if manufacturers find difficulty in securing comprehensive dealer support in the introduction of new products, there may be other ways to secure widespread sale than the dealer saturation technique which some manufacturers have used in the past.

It should further be recognized that as long as there is significant competition from imports, as seems likely to continue to be the case in the electrical appliance field, the Canadian consumer cannot long be deprived of the benefit of technological advances or product improvement. The influence of the promotional advertising carried by American magazines, radio and television programs which reach the Canadian market must also be an important factor in the creation of demand in Canada for new products. Several witnesses conceded that the availability of imports modified the danger of innovations being held back in Canada, (p. 3665) although one argued that the demand for a new product in Canada must still be created, and referred to the frozen food industry which was said to have developed ten years later in Canada than in the United States (p. 943). However, other factors than product promotion, such as higher levels of income, and the earlier widespread use of home freezers and improvements in distribution methods must have affected this development.

In addition to the effect which price-cutting at the retail level was alleged to have on the introduction of new products, it was also said to affect the quality of the distribution system (p. 1564). It was argued that unless a distributor could predict the markup he was going to get, which he could not do without resale price maintenance, he tended to operate along lines of extreme caution, rather than to take the risks inherent in progressive merchandising (p. 344). In addition it was argued that the price-cutting retailer could only operate profitably while conventional retailers were doing the necessary promotional work, and that when the full-price retailers had been driven out of business, the operations of the price-cutting retailer would also become unprofitable, sales volume would go down, and distribution and manufacturing costs would rise (p. 1535). Representatives of the hardware trade said that the use of hardware items as premiums or loss-leaders had a disturbing effect upon business which added to the costs of distribution (p. 448). Other witnesses said that the abolition of resale price maintenance had placed the capital investment of manufacturers, wholesalers and retailers in jeopardy (p. 1053), that there was a critical credit situation in the electrical appliance trade which meant that manufacturers' risks had increased and which made banks reluctant to give credit to dealers (p. 926). At the consumer level, however, the amount of consumer credit outstanding at the end of each of the first three quarters in 1954 was greater than at the corresponding item in 1953. Price-cutting was said to be discouraging investment in the appliance industry (p. 928), but at the same time it was pointed out that productive capacity was much greater than market requirements. The low markup competition of the chain stores was also said to be discouraging investment in the baking industry (p. 253). Several witnesses suggested that the consumer sees the immediate benefit of lower prices but may be unmindful of the need for profitable operations, if business is to continue to provide the benefits of new developments in a free enterprise system (p. 552). It was not disputed, however, that the profits of some merchants had increased considerably on the basis of volume selling.

On the other hand, the Canadian Association of Consumers expressed the opinion that competition in price bred inventiveness and ingenuity and price rigidity killed them (p. 1747), and that sheltering from competition usually meant sheltering from progress (p. 1755).

Another alleged consequence of retail price competition in the sale of branded articles from the viewpoint of the general public interest, was the possible effect upon employment. It was argued that consumers, being confused by varying prices, lost confidence in the products affected, and consequently sales fell off and employment conditions were depressed (p. 253). It was argued that the competition of big volume, low markup retailers was being felt most severely by small dealers, the curtailment of whose operations would mean the discharge of employees (pp. 599, 735, 1124). Each retailer put out of business, it was said, meant one less outlet for the jobber, whose

business declined, resulting in further unemployment (p. 3017). Other small retailers, rather than sell at a loss, would drop price-cut brands, which again would lead to falling sales and cuts in production and factory employment (p. 4302). Some dealers, in an effort to obtain lines which would not be price-cut, were importing on an extensive scale from the United States, thus discouraging the Canadian manufacturer and threatening unemployment (p. 920). In this regard the statistics for imports tended to show that in the case of some lines of electrical appliances, such as refrigerators, the volume of imports in 1954 was less, both absolutely and in proportion to domestic production, than in 1953. It was urged by other witnesses that the country benefitted through the opportunity for persons to set up small businesses (p. 4304), and that a system of free enterprise depended upon the existence of small independent business men (p. 1008), which was now being threatened by the prevalence of price-cutting.

Employment was also said to be affected in other ways. One witness said that, to preserve an expanding economy with greater employment, it was essential to foster the introduction of new and improved products (p. 915). This submission is related to the question of product promotion and, as indicated above, there appears little reason to believe that new products are not now being introduced and promoted, despite some arguments to the contrary. Another argument advanced by several witnesses was that the full-price retailer was a greater asset to the community than the retailer operating with a limited staff, a low markup and a great volume of business, because he employed relatively more people for the same amount of sales (pp. 599, 1604). This argument has been used on many occasions in the past by those opposed to the introduction of lower cost methods of doing business and clearly runs counter to the advantage gained by the public through less costly operations, whether in manufacturing or distribution.

Several witnesses also argued that the low markup retailers carried on business in the low rental, low tax areas and did not assume a fair share of community responsibility (pp. 547, 1609). On the other hand, it was said the downtown merchants, who had to pay the heaviest rentals and property taxes, could not operate on the low margins which had become common since the prohibition of resale price maintenance, and it was argued that the result would be that buildings would become neglected, property values depreciated, and losses would be sustained in municipal taxes. Such arguments have been advanced where any new development requires adjustments to be made in the customary ways of doing business, and it is the case that if the public desires the facilities offered either by way of personal service or location it will support the business by its patronage. While some shopping areas in larger cities are being affected by the development of suburban shopping centres and other changes in buying habits, which are probably much more significant in their impact on trade, it seems unlikely that the advantages of

shopping in areas which are well served by a wide variety of shops will soon lose favour with large numbers of consumers.

2. In Relation to Retailers

(a) Effect on Consumer Goodwill and Confidence

In an earlier section where representations as to the effects of price-cutting in relation to the consumer were discussed, many of the arguments considered really had to do with the position of the retailer, because any developments in consumer buying are necessarily reflected in some phase of retailing. In large measure, therefore, the representations made in regard to the alleged effects of loss-leader selling in relation to retailers have already been reviewed in the sections dealing with the consumer. To a considerable extent the same situation applies in the case of wholesale distributors and manufacturers so that it is not necessary to review in detail arguments already discussed and the main attention in this and the succeeding sections will be given to representations which introduce new aspects.

The possible significance of price competition at the retail level affecting the confidence of consumers in branded articles, and the bearing this might have on the volume of purchases of such articles has been dealt with in the earlier section. It was found that among those who considered that trade in general would be affected detrimentally, there were some who believed that when the consumer was faced with price reductions he would defer making purchases in anticipation that prices would drop still further. On the other hand, there were those who were equally convinced that price reductions led to a rush of advance buying on the part of consumers so that immediate sales volume would be unduly swollen and future sales would be correspondingly lower in consequence. If such influences worked on different sections of the buying public they would obviously tend to balance each other. The diversity of view expressed by those who are directly concerned in selling to the public suggests that neither influence operates to establish an actual trend in buying. In the absence of more positive indications it seems more reasonable to conclude that the lowering of prices would have the effect normally expected of making the market wider than it would otherwise be.

(b) Maintenance of Competitive Position

We have already discussed arguments that a retailer who is faced with price-cutting competition, -

(i) Loses sales of the price-cut articles;

(ii) Loses sales of other articles bought by customers attracted to the cut-price store;

(iii) Acquires the reputation of being a high price dealer, thereby losing customer goodwill;

and that his only alternative, if he is to remain in business, is to meet his competitor's low prices by selling at a loss.

While price is a very important element in determining where a customer will shop, the Commission considers that these arguments constitute an oversimplification of a problem that is much more complex than they suggest.

In an endeavour to secure reliable data concerning the actual effect of price reductions upon the sales volume of those who reduced prices and also those who did not, the Director conducted studies of a number of specific cases of price reductions in four different fields of retailing, in several parts of Canada. With one exception, these studies were made in 1953 and are fully set out in the Green Book. They were concerned with, -

(i) Price reductions in the summer of 1953, in a wide range of drug store items, which occurred in the City of Montreal;

(ii) Price reductions during the same period in many items in the electrical appliance field, which occurred in many places across Canada;

(iii) Instances of price reductions in cigarettes in 1953, in the cities of Winnipeg and Vancouver, and in 1952 and 1953 in cigarettes, by two chain stores in central Canada and one Ontario drug store.

The remaining study was concerned with a reduction in January, 1954, in the price of bread in the major chain stores in the City of Montreal. Full particulars of this study were presented to the Commission on the opening day of its hearings, May 19, 1954.

After careful examination of all the facts disclosed by these studies the Commission is of the opinion that no clear-cut conclusions can be drawn from them concerning the effect of the price reductions. Generally speaking, where specific data on the point were obtained, sales of the articles whose prices were reduced showed increases, as would be anticipated. However, the amount of such increases varied greatly. When we look at the general sales of stores that made reductions we find that in some instances there was practically no change in total sales volume during the period of the

sale, while in others total sales showed increases, sometimes quite substantial. In one instance, appliance chain stores, total sales during the period of price reductions in 1953 were less than in the corresponding months of 1952. Where large increases occurred in the sales of price reduced articles, there was a marked tendency immediately after the end of the period of reduced prices, for sales to revert to or nearly to the level prevailing before the reduced price period, but no conclusion could be reached as to whether or not a store which conducted a series of such price reduction campaigns would gain a permanent increase in sales.

In respect of certain questions posed by these studies, the Director was not able to obtain a sufficiently broad sampling of facts to afford reasonable assurance that a fairly representative picture was presented. Thus the effect of price reduction by one or a number of dealers upon the business of other dealers could not be fully presented in all of these cases, but in so far as the evidence in the studies goes, it shows wide variations, running all the way from no discernible loss to heavy loss of sales, at least during the period of price reductions.

Undoubtedly other factors than price affected in varying degrees the situations disclosed in these studies, factors which we had no means or at least no adequate means of evaluating. The studies do perhaps warrant one conclusion, viz., that in order to make even a hopefully accurate estimate of the effects that may be expected to flow from a given instance of price reduction, it is necessary to know, and make allowances for, all aspects of the competitive situation, including the public attitude toward price, quality and service, existing in the particular trade at the particular time and in the particular area or locality affected.

Some further references to the bread and cigarette studies will be found in the chapter dealing specifically with those products.

While the effects of price reductions vary greatly, it must be recognized that in most circumstances, when one retailer reduces prices, some adjustments will be called for in the operations of competing retailers. Furthermore, although there is no evidence to support the view that the total amount of business done has been reduced as a result of price-cutting, and in fact experience and some of the evidence before the Commission would suggest the reverse to be true, there has undoubtedly been a shift of business in some lines, within the total, towards those retailers who emphasize the price appeal. Without question this has created problems for certain other retailers. In addition to several considerations which have already been discussed, other representations were made to the Commission in this connection.

One retailer said that the competitive difficulties of many

appliance retailers arose from the fact that, instead of passing on to the consumer some of the benefit of greatly increased post-war volume, they had insisted on keeping retail prices high (p. 777). This was a very different argument than that generally advanced, with special reference to the appliance trade, that those who were selling on narrow margins were trading on the work done by other dealers. In support of this latter argument some witnesses contended that, where retailers performed all necessary functions, the cost of doing business, even by the most efficient retailer, could not diverge from the average by more than a few percentage points (pp. 1562, 2588).

With respect to this question of how much variation there is in the cost of doing business in the appliance field, the Commission was referred to the information published by the Dominion Bureau of Statistics under the general heading "Operating Results and Financial Structure" for various types of retail distributors and to the relatively limited variations in the average operating results given for different volume-of-turnover categories in these publications. At the request of the Director of Investigation and Research, the Dominion Bureau of Statistics made a special compilation, using the same returns which had been employed to determine these averages, for independent household appliance and radio stores, showing the range of operating results which they represented. The variations are shown by means of the quartile points. The lower quartile is that point below which one quarter of the total number of returns lies, and the upper quartile is that point above which one quarter of the total number lies. The mid-quartile divides the group into two equal parts and is the same as the median. Since separate tabulations were made for each factor, that is gross profit, total operating expenses and net operating profit, the figures given for the quartile points in the table below do not necessarily relate to the same stores in each case.

Table 7. - Operating Results of Unincorporated Appliance and Radio Stores, 1952

	Lower quartile	Mid-quartile	Upper quartile	Average
		Owned (34 Stores)		
Gross Profit	22.1	25.1	32.0	26.8
Total Operating Expenses	13.3	16.9	21.2	17.8
Net Operating Profit	4.8	8.1	11.8	9.0
		Rented (44 Stores)		
Gross Profit	22.8	25.2	30.5	26.8
Total Operating Expenses	14.3	17.3	29.8	17.5
Net Operating Profit	5.3	8.1	11.8	9.3

Because the survey on which these figures are based requested information as to profits, the data could be obtained from retailers only on a voluntary basis and therefore may not provide a strictly accurate representation of "normal" operating ranges. More important is the fact that in compiling the above table proprietors' earnings were omitted from operating expenses and included in net profit, so that the larger the business the higher was the proportion of labour expenses included in total operating expenses. Conversely, proprietors' earnings generally form a larger proportion of net operating profit for a small store than for a large one. Again, the averages and range figures were not weighted by sales, so that a small store carried as much importance as a large one. In spite of these limitations, however, since the figures given exclude extremes at both ends of the range, it can be said that they do not support the view that differences in the cost of doing business in the electrical appliance field are ordinarily very small.

The representations made to the Commission suggest that there is some feeling particularly on the part of retailers of appliances, that the introduction of flexibility in prices at the retail level resulting from the abolition of resale price maintenance, favours the department stores as against independent retailers, despite the fact that the overwhelming number of situations involving price-cuts about which complaints were made to the Commission, related to sales made by independent retailers who were operating on low margins with high volume. Some modification of this last statement is now required, by reason of information furnished to the Commission that since August, 1954, at least one very large department store organization has conducted extensive "sales" of certain appliances at greatly reduced

prices. A statement was quoted to the Commission on several occasions, which had been made by the President of one of Canada's leading department store chains, to the effect that the prohibition of resale price maintenance was a serious threat to the business of many small retailers, whereas his own company was not affected to any great extent because it had developed many brands of its own. It was therefore argued that the ban on resale price maintenance discriminated against independent merchants, who relied on the stability in price of branded goods, without affecting the business of those who sold private brands (p. 2644). It was argued that prior to 1952, the small dealer had no difficulty in competing with the large department stores, because he was selling national brands and could claim to be offering better quality (p. 757).

A number of witnesses, however, took exception to this argument. One retailer of appliances argued that because resale price maintenance required them to sell at the same prices it was impossible for small retailers to compete successfully with department stores, on account of their prestige, their easy credit terms, their daily advertising in the newspapers, their 40 or 50 floor samples, etc. Now, it was contended, the department stores found it so difficult to compete with well run independent stores in the sale of nationally advertised lines that they were placing increasing emphasis upon their own private brands (pp. 1791, 1799). Another witness pointed out that in the United States some department stores found that they had been acting as show rooms for independent discount houses and in some cases had discontinued their appliance departments (p. 3113). In other representations it was contended that the smaller merchant, with lower overhead and greater resourcefulness, could give lower prices to the consumer, particularly in the electrical appliance field (p. 3771). In the sale of such things as furniture, carpets, rugs, chinaware, and household utensils, it was said, large retailers had an advantage, because large assortments of colours, styles, sizes and price ranges had to be carried; early buying, months ahead of sale, was necessary; heavy financing was required; warehousing, trucking and credit facilities were essential; and specialized buyers and executives with high salaries were needed. On the other hand, in the sale of electrical appliances, there was a much more limited assortment, delivery from the supplier was excellent, no expert buying was needed, and it was argued that the consumer knew that a branded television set, for example, was the same thing regardless of where it was sold (p. 3806). In the sale of electrical appliances the big retail store was at a disadvantage on account of its heavy overhead (p. 3808).

It was similarly evident in the representations made to the Commission that there is a feeling among some retailers that the abolition of resale price maintenance and increased price competition give an advantage to certain types of chain stores, particularly the grocery chains. This might be true if the chain stores were the only

retailers to emphasize rapid turnover on low margins, but as indicated in Chapter III, 1., (b) this is far from being the case. The development of the Independent Grocers' Alliance and other group buying organizations demonstrates how alert many retailers in the grocery field are to the possibility of adopting improved methods of operation, which enable them to compete successfully with the grocery chains. The Retail Merchants' Association of Canada (Saskatchewan) Incorporated, in its joint brief with the National Foods Division of The Retail Merchants Association of Canada Inc., pointed out that because smaller operators in the food field could not successfully promote private brands, their best defensive weapon in competition with the chain stores was that of matching the prices of the chain stores' private brands with similar prices for nationally advertised brands of the corresponding items, even where at times this led to selling at less than laid down cost (p. 4190).

Representations repeatedly made to the Commission alleged that loss-leader selling or price-cutting had already driven many retailers of appliances, hardware, food and cigarettes out of business, and that unless steps were soon taken to limit price competition the existence of substantial additional numbers would be threatened.

In connection with the sale of electrical appliances, one witness said that the decrease in the number of appliance dealers began only when resale price maintenance was prohibited (p. 520). Another pointed out that those retailers who operate on low margins can do so only because they have built up a large volume of business, but that if all retailers attempted to follow suit, a great proportion of them would have to go out of business, since the business available would not provide sufficient profit at low margins to maintain them all (p. 2791). An official of R. C. A. Victor Company, Ltd., stated that the Company had experienced, during the period of approximately 12 months prior to the hearing (June, 1954), ten times as many bankruptcies among its dealers as the yearly average of the five years immediately preceding this period. The increase in the number of failures was attributed to competition which had forced the now bankrupt dealers to sell on gross markups not adequate to meet their operating costs (p. 1811). Without giving the source of the information, the Canadian Sporting Goods and Cycle Association alleged that failures among radio and appliance dealers had increased between 1952 and 1953 by 117% (p. 548), and argued that unless steps were taken to confine competition to "salesmanship, honest advertising, presentation of product, premises, etc." the smaller retailer would be eliminated (p. 555). The following figures attributed to Dun & Bradstreet, and said to cover radio and appliance dealers in Canada, were quoted by the Canadian Electrical Manufacturers Association (p. 912):

"Year	Failures	Liability
1950	11	$ 90,000.00
1951	22	387,000.00
1952	18	538,000.00
1953	43	2,220,000.00"

This Association argued that many independent retailers were being forced out of business by the competition of low markup dealers in the metropolitan areas (p. 911), and that the prohibition of resale price maintenance was one of the causes of increasing failures in the electrical appliance trade. However, it was conceded that other factors, including the influx of traders into the post-war sellers' market, steadily increasing competition, inexperience and incompetence, and lack of capital also played a part (p. 969). While the Northern Electric Company Limited admitted that the progressively increasing number of failures in the appliance business was attributable partly to general economic trends, it contended that "predatory" price-cutting was also a factor (p. 1590). A representative of the Canadian Wholesale Hardware Association said that while there had probably been too many retailers in the appliance business, the number of failures was "more than commensurate with the number of appliance dealers who could conceivably operate profitably in the field" (p. 524). Another witness argued that under resale price maintenance it would not have mattered if a large number of people had gone into the appliance business after the war because they would have been able to survive (p. 3070). Some differing opinions however were also expressed. For example, one witness said that some retailers in the appliance field were not doing very well, owing to lack of experience, inadequate financing and tightening credit, and some should not have been in the business in the first place (p. 712).

The threat of increased failures among retailers in the hardware trade was also largely ascribed to the prices at which electrical appliances were being sold, although the increasing use of hardware items as premiums, by manufacturers in other fields, was also said to be a factor. The Canadian Retail Hardware Association expressed the opinion that the reason the Dominion Bureau of Statistics figures on commercial failures did not support the view that loss-leader selling was forcing hardware retailers into bankruptcy was that the practice had not been in use over a long enough period to be reflected in the statistics (p. 3712).

With regard to the sale of food products it was argued by one witness that resale price maintenance was necessary to prevent small businesses from going bankrupt (p. 2472) and that the existing ban on resale price maintenance was an open invitation to powerful organizations to destroy their weaker competitors (p. 2473). In other representations it was argued that the intention behind loss-leader selling was to destroy competition, not merely to increase sales in the loss-leading store, and while the retailer employing

loss-leaders might gain in sales, this would only result from eliminating another retailer (p. 3513).

Perhaps it should be noted that it has generally been considered that resale price maintenance played a less important part in the grocery field than in some other branches of retail trade.

Several witnesses argued that large numbers of retailers of cigarettes were threatened with failure as the result of the competition of chain food stores particularly. The Retail Tobacco Association of the Province of Quebec alleged that cigarette sales in chain food stores increased by 400% in 1953, as compared with 1952 (p. 1220), and argued that thousands of small retailers who handled cigarettes were threatened with bankruptcy because these chains were selling cigarettes as loss-leaders. It was said however that there were many individuals engaging in the cigarette business such as operators of barber shops, shoe shine parlours, watch repair establishments, taverns and restaurants who did not belong in it (p. 210). The Toronto Retail Tobacconists Association also alleged that the chain stores had reduced the price of cigarettes to as low as $2.99 for a carton of 200, and claimed that of the 176 original members of the Association, more than 70 had changed their stores and sold out, during the past year (p. 411). The Province of Quebec Wholesale Grocers' Association expressed the opinion that the chain stores were not selling cigarettes as loss-leaders, but argued that the effect was the same, because the chain prices were so low that independent merchants could not meet them (p. 4320). What the Association objected to was price-cutting which drew consumers to different channels of distribution at such a rate that the small independent merchant, whether or not he was efficient, would be unable to survive (p. 4319). On the other hand, another witness expressed the view that small retailers who handled cigarettes were not often forced out of business, because their overhead was low and because they sold other types of merchandise in addition to cigarettes. In his view the only result of price-cutting of cigarettes was that the earnings of these small retailers were reduced (p. 3817).

Statistics on failures in Canada are available from two sources, the reports of the Dominion Bureau of Statistics and information compiled by Dun & Bradstreet of Canada, Limited. The figures from these two sources, which are shown in the tables in this section, are not compiled on the same basis and thus show variations in different periods. The Dun & Bradstreet figures include some failures which do not come under the bankruptcy or insolvency legislation, which legislation is the basis for compilation of the figures given by the Dominion Bureau of Statistics. On the other hand the Dominion Bureau of Statistics includes a large number of cases which are technically failures under the bankruptcy legislation but which are not rated by Dun & Bradstreet as commercial failures. The following table is compiled from figures published by Dun & Bradstreet. In addition to retail trade, it embraces many other fields of business.

Table 8. - Rates of Industrial and Commercial Failures in Canada and the United States 1900-1954

Failure Rate per 10,000 Concerns			Failure Rate per 10,000 Concerns		
Year	Canada[1]	United States[2]	Year	Canada	United States
1900	140	92	1927	125	107
1901	145	90	1928	120	108
1902	116	93	1929	128	104
1903	101	94	1930	152	121
1904	125	92	1931	143	133
1905	132	85	1932	161	153
1906	113	77	1933	138	101
1907	116	83	1934	90	61
1908	145	108	1935	78	62
1909	123	87	1936	71	48
1910	104	84	1937	55	46
1911	104	88	1938	58	61
1912	99	99	1939	72	70
1913	119	99	1940	64	63
1914	194	110	1941	49	55
1915	110	132	1942	36	44
1916	114	100	1943	11	16
1917	77	80	1944	6	7
1918	62	58	1945	6	4
1919	54	38	1946	7	5
1920	73	49	1947	15	14
1921	159	102	1948	23	21
1922	228	119	1949	27	35
1923	195	94	1950	32	34
1924	148	101	1951	36	31
1925	141	100	1952	37	29
1926	128	101	1953	44	33
			1954	-[3]	42[4]

(1) Source: Dun & Bradstreet of Canada, Limited.

(2) United States series based on information published by Dun & Bradstreet, Inc., New York, as reported in the Statistical Abstract of the United States (U.S. Department of Commerce). Beginning in 1933 real estate and financial companies were excluded from failures, to bring the failure record more nearly in accord with the types of enterprises covered in Dun & Bradstreet's estimate of the total number of concerns in business. Beginning in 1939, voluntary discontinuances with loss to creditors, and small concerns forced out of business with insufficient assets to cover all claims, were included with other types of failures previously recorded.

(3) and (4) - see next page

Footnotes to Table 8, continued

(3) Not available.
(4) Dun's Review and Modern Industry.

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The average annual failure rate since 1900 in Canada was 95 per 10,000 concerns and in the United States was 74 per 10,000 concerns. The difference between the average rates for the two countries is not regarded as important in considering the trend from one period to another. It is rather that the general movement in the rate of failures tends to be the same in the United States and Canada and very often the high or low points are shown in both countries for the same year. The most noticeable variations shown in the table are those reflecting economic developments resulting from two world wars and business depressions, but the figures for recent years indicate that the problem of adjusting to conditions of a competitive market has become more of a factor, as the sellers' market of the Second World War and post-war period came to an end and a buyers' market took its place. The Commission has noted, however, that even in 1953, the failure rate in Canada was considerably below that of the pre-war period and less than half the average failure rate since 1900.[1]

Because of the extremely small number of failures which occurred during the period when business was subject to wartime controls, the increase in commercial failures during recent periods is often compared with the very low figures of the war period, rather than with the number in other periods when business was not being regulated. In 1954, the failure rate was rising above that of 1953, as noted by the Financial Post of April 17, 1954, which commented thereon as follows:

> "Business failures latest eight weeks number 288, compared with 154 in same period last year (Dun & Bradstreet of Canada). Continues slow but steady rise of failures over last few years. Still represents nothing alarming in proportion to our record business population."

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(1) An article in the Manchester Guardian of January 11, 1954, states that the number of bankruptcies in Great Britain has risen continuously in every year since the war. The number of bankruptcies increased from 323 in 1946 to 2,200 in 1953, although the number in the latter year was still below the prewar level.

The statistics of failures which have been considered so far relate to the entire field of business. The following table shows the number of failures in each quarter of the last three years in various fields of retail trade in Canada and the United States. In view of the stress put in many representations to the Commission on the absence of resale price maintenance as a principal factor inthe increase in the number of failures in retail trade in Canada, it may be recalled that legislation in 45 States in the United States permits manufacturers to engage in the practice of resale price maintenance.

Table 9. - Number of Failures in Retail Trade in Canada and the United States by Quarters, 1952-1954

	1952				1953				1954			
Retail Trade	I	II	III	IV	I	II	III	IV	I	II	III	IV
CANADA												
Foods	28	25	24	25	31	25	25	36	32	38	24	27
Farm Supplies, General Stores	4	5	2	5	8	5	10	7	6	8	4	4
General Merchandise	11	6	1	5	7	5	4	9	12	8	8	4
Apparel	18	18	10	14	25	20	16	17	44	28	19	25
Furniture, Household Furnishings	10	13	8	5	6	16	22	20	32	29	23	32
Lumber, Bldg. Materials, Hardware	9	5	6	4	11	6	9	9	9	6	7	11
Automotive Products	17	12	15	14	20	19	20	26	31	18	28	32
Restaurants	11	18	10	16	14	11	16	30	28	14	13	21
Drugs	3	3	1	1	2	1	3	1	2	3	2	3
All Other	9	17	4	6	12	15	14	15	18	14	11	10
Total	120	122	81	95	136	123	139	170	214	166	139	169
UNITED STATES												
Foods	246	247	213	213	206	237	200	245	257	255	228	264
Farm Supplies, General Stores	-	-	-	-	-	-	-	-	-	-	-	-
General Merchandise	35	40	33	27	39	38	33	39	53	43	45	51
Apparel	187	140	135	108	167	152	148	130	229	230	170	179
Furniture, Household Furnishings	99	134	96	99	164	166	172	209	264	255	212	175

Table 9. - Number of Failures in Retail Trade in Canada and the United States by Quarters, 1952-1954 - Continued

Retail Trade	1952				1953				1954			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
UNITED STATES (Continued)												
Lumber, Bldg. Materials, Hardware	46	48	42	51	52	56	51	62	72	94	65	80
Automotive Products	73	91	66	72	99	141	135	145	172	129	158	157
Restaurants	221	234	185	188	184	188	208	213	227	262	248	248
Drugs	30	26	34	17	31	28	24	40	39	47	33	42
All Other	86	88	99	84	101	101	85	92	137	135	115	121
Total	1023	1048	903	859	1043	1107	1056	1175	1450	1450	1274	1317

Source: Dun & Bradstreet of Canada, Limited.
Dun's Statistical Review.
Dun's Review and Modern Industry.

On the basis of these figures it appears that the broad pattern of failures in the retail trade in the two countries has been rather similar. Both show a gradual increase in total failures in the early part of the period covered, and both show substantial increases in 1954. Also the trend of failures within comparable groups is not dissimilar. It must be remembered that many other factors, in varying ways and to different degrees, have influenced the course of business success and failure in the two countries.

In the statistics of failures published by the Dominion Bureau of Statistics, wholesale and retail trade are grouped together, but narrower classifications are used than by Dun & Bradstreet so that information is given for more individual classes of business. The following table presents the number of failures by quarters for different classes of trade, and for manufacturing, service and other businesses as a whole for the period 1948 to 1954. It will be recalled that the legislation prohibiting resale price maintenance did not become effective until the end of December, 1951.

Table.10- Commercial Failures in Canada by Quarters, 1948-1954

	1948				1949				1950				1951			
	I	II	III	IV	I	II	III	IV	I	II	III	IV	I	II	III	IV
General Stores	12	8	7	10	13	8	11	13	10	13	8	14	15	17	12	12
Grocery	10	9	6	8	9	10	11	17	18	19	11	12	16	17	21	11
Confectionery	4	4	2	2	6	5	2	3	6	8	8	8	13	4	5	5
Drink & Tobacco	-	2	-	3	-	3	-	-	-	-	-	4	3	2	2	3
Fish & Meat	5	5	4	3	5	5	8	6	15	12	8	9	11	9	15	9
Boots & Shoes	2	1	3	2	4	5	4	6	11	5	1	2	6	2	5	3
Dry Goods	-	6	3	2	9	5	1	4	11	10	3	8	6	8	3	7
Clothing	6	4	4	9	9	10	9	12	23	19	16	9	28	16	17	14
Furniture	3	4	3	1	3	4	2	3	4	2	4	7	11	6	6	5
Books & Stationery	1	1	-	1	1	4	1	1	3	2	1	9	6	3	5	6
Automobile	-	6	2	1	3	1	2	5	3	3	2	3	5	2	4	5
Hardware	1	4	5	4	3	2	2	1	5	3	3	-	7	5	4	7
Electric Apparatus	3	2	-	7	7	5	7	5	5	2	3	5	8	4	5	10
Jewelry	3	4	2	2	6	2	3	1	9	6	1	3	7	10	5	5
Coal & Wood	2	8	2	7	2	4	1	2	7	3	2	5	4	8	3	6
Drugs & Chemicals	2	2	1	1	-	1	1	4	3	5	2	4	2	1	2	3
Miscellaneous	13	17	9	19	13	9	24	26	16	23	20	23	20	21	18	24
Total Trade	67	87	53	82	93	83	89	109	149	135	93	125	168	135	132	135
Total Manufactures	39	53	50	46	57	54	44	77	81	67	45	64	79	58	56	76
Total Service	42	34	35	33	51	41	48	63	89	57	57	70	78	61	54	63
Total Other	55	48	43	46	69	52	58	78	63	79	53	75	75	64	70	90
Grand Total	203	222	181	207	270	230	239	327	382	338	248	334	400	318	312	364

Source: Dominion Bureau of Statistics

Table 10. - Commercial Failures in Canada by Quarters, 1948-1954 - Continued

	1952				1953				1954			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
General Stores	14	15	10	14	16	9	16	21	29	26	12	
Grocery	18	15	12	11	18	11	18	14	27	22	19	
Confectionery	9	7	7	5	8	2	8	3	13	14	11	
Drink & Tobacco	6	7	5	2	6	1	2	3	7	5	2	
Fish & Meat	11	10	9	7	10	11	10	12	19	15	10	
Boots & Shoes	7	7	2	6	3	3	5	6	8	7	5	
Dry Goods	8	7	8	4	9	3	8	12	16	12	11	
Clothing	19	16	14	17	14	23	21	28	36	25	27	
Furniture	6	7	4	7	8	12	5	5	13	11	8	
Books & Stationery	5	6	3	3	2	4	5	6	9	9	10	
Automobile	13	2	4	7	6	4	8	12	17	13	12	
Hardware	7	4	3	3	2	5	5	8	7	6	4	
Electric Apparatus	14	8	2	7	3	10	20	17	23	13	14	
Jewelry	8	11	2	5	8	12	7	9	11	5	5	
Coal & Wood	8	1	3	1	2	3	5	5	11	6	3	
Drugs & Chemicals	10	1	2	1	5	5	6	5	9	6	5	
Miscellaneous	23	28	20	20	26	23	18	30	44	36	27	
Total Trade	186	152	110	120	146	141	167	196	299	231	185	
Total Manufactures	91	83	62	69	85	73	79	122	127	99	84	
Total Service	86	64	60	69	60	65	72	89	110	99	98	
Total Other	107	95	68	87	91	72	76	123	144	101	98	
Grand Total	470	394	300	345	382	351	394	530	680	530	465	

Source: Dominion Bureau of Statistics

An examination of those classifications shown in the preceding table, in which dealers were alleged in representations to the Commission to be failing in large numbers as a result of loss-leader selling, reveals a mixed picture. Failures among electric apparatus dealers showed a moderate increase in 1951 and a considerably greater increase since the middle of 1953, while failures in the hardware trade increased moderately in 1951 and have been relatively steady since then, and in the furniture trade failures increased moderately in 1951 with a further moderate increase in 1954. Failures in the drink and tobacco category increased in 1951 and again in 1952, declined in 1953 and rose again moderately in 1954. Failures in the grocery field show moderate increases in 1950 and 1951, and a further increase in 1954. In the confectionery trade there was an increase in the number of failures in 1950 and again in 1954, but a noticeable decrease in 1953.

In view of the general increase in failures among the business population as a whole and the fact that a greater number of failures in recent periods is shown for such trades as fish and meat, dry goods, clothing and automobiles, about which no allegations of loss-leader selling were received, it seems reasonable to conclude that competitive factors of a broader character, rather than the absence of resale price maintenance, have led to more failures in all branches of retail trade.

Support for this view is found in the analysis as to causes of failure which are given by Dun & Bradstreet of Canada, Limited, in a survey based upon its own credit reports and the opinions of informed creditors. The report, published on May 31, 1954, covering failures in all lines of business in Canada in 1953, listed the following causes for failures of business concerns:

"ALL LINES OF BUSINESS ALL METHODS OF OPERATION

Number	Per Cent	Underlying Causes		Apparent Causes	Number	Per Cent
61	5.8	Neglect	Due to:	(Bad Habits	14	1.3
				(Poor Health	31	3.0
				(Marital Difficulties	1	0.1
				(Other	15	1.4
11	1.1	Fraud	On the part	(Misleading Name	-	-
			of the	(False Financial Statement	4	0.4
			principals,	(Premeditated Overbuy	2	0.2
			reflected by:	(Irregular Disposal of Assets	4	0.4
				(Other	1	0.1
187	18.0	Lack of experience	)	(Inadequate Sales	533	51.3
		in the line	)Evidenced	(Heavy Operating Expenses	81	7.8
			)by inability	(ReceivablesDifficulties	196	18.9
373	35.9	Lack of manage-	)to avoid	(Inventory Difficulties	84	8.1
		rial experience	)conditions	(Excessive Fixed Assets	70	6.7
136	13.1	Unbalanced	)which re-	(Poor Location	36	3.5
		experience*	)sulted in:	(Competitive Weakness	147	14.1
237	22.8	Incompetence	)	(Other	49	4.7
32	3.1	Disaster	)Some of	(Fire	18	1.7
			)these occur-	(Flood	-	-
-	-	War Mobiliza-	)rences could	(Burglary	2	0.2
		tion	)have been provided	(Employees' Fraud	4	0.4
			)against through	(Strike	-	-
			)insurance:	(Other	8	0.8

Report, published on May 31, 1954 by Dun & Bradstreet covering failures in all lines of business in Canada in 1953, continued

Number	Per Cent	Underlying Causes	Apparent Causes	Number	Per Cent
			(Shortage of Manpower	-	-
			(Shortage of Material	-	-
2	0.2	Reason Unknown	Because some failures are attributed to a combination of apparent causes, the totals of these columns exceed the totals of the corresponding columns on the left.		
1039	100.0	TOTAL			

* Experience not well rounded in sales, finance, purchasing and production on part of the individual in case of a proprietorship, or of two or more partners or officers constituting a management unit."

It will be noted that lack of experience, in management or generally, and incompetence are found by Dun & Bradstreet to be the principal causes of failure. It is possible that these shortcomings would be rendered less serious in periods when price competition among retailers was less active, and it may be concluded that incompetence and lack of experience are more likely to lead to failure when merchants have to adapt their operations to the conditions of a buyers' market.

The Commission had brought to its attention only one study where an attempt was made to isolate resale price maintenance as a factor in protecting retailers from being forced out of business. At the request of the Federal Trade Commission in the United States, Dun & Bradstreet Inc., in 1947, prepared an analysis of drug store failures for the years 1939, 1940, 1946 and 1947, in those states which did not have "fair-trade" laws (i.e., where resale price maintenance was not practised) compared with drug store failures in neighbouring states which did have "fair-trade" laws. The results of this study were given in evidence by Dr. John Blair, Assistant Chief Economist of the Federal Trade Commission, at hearings before the Committee on Interstate and Foreign Commerce, United States Senate, in 1952.

In so far as the years 1946 and 1947 were concerned, the results showed that there were scarcely any drug store failures in any of the states during those years. With respect to the years 1939 and 1940, the results showed that the failure rate was, in almost every instance, lower in states which had no "fair-trade" laws than in the adjoining "fair-trade" states.

3. In Relation to Distributors (Wholesalers)

Apart from the trade in supplies for beauty parlours and hairdressers, which is the supplying of goods for direct use rather than for resale, the information placed before the Commission indicates only two fields in which wholesale distributors consider that their business has been substantially affected by the selling of goods at the retail level on narrower margins partly as a result of the abolition of resale price maintenance. These two fields cover the distribution of electrical appliances and cigarettes. In only one of them, the tobacco trade, does the information disclose that the changes may lead to fairly wide adjustments.

There were alleged to be four ways in which the intensification of competition at the retail level in the sale of electrical appliances, detrimentally affected the position of the wholesale distributor. It was argued that wholesale hardware organizations have lost business by being forced to discontinue selling different lines of electrical appliances because the retail prices had been so

reduced that their customers would no longer handle these lines (p. 1653). To the extent that there has been a shifting of the sale of electrical appliances away from retail hardware stores, the nature of whose business involves a slow rate of turnover for most of the merchandise handled, toward retailers who specialize in the sale of electrical appliances and emphasize faster turnover and larger volume, it would appear that wholesale hardware distributors may not in the future account for as large a proportion of the total trade in appliances as they have in the past. It was also argued that loss-leader selling was forcing retail hardware stores out of business which further diminished sales by distributors, since each hardware store that discontinued business meant one less outlet for the jobber (p. 3017). As indicated in the immediately preceding section, however, the information which the Commission has been able to obtain indicates that there has been no significant increase in the number of failures in the retail hardware business since resale price maintenance was prohibited. A third way in which the distributor's position was said to be affected was that, in some areas, a few retailers had managed to build up their sales volume to such a size that they were able to tempt distributors with very large orders, in effect inviting them to tender on the orders. The result was that the pressure toward lower prices at the retail level was extended to the wholesale level (p. 79). Finally it was argued that wholesalers were losing accounts because manufacturers were increasing their direct sales to retail customers, in order to permit them to compete with retailers selling in large quantities at low prices (p. 552).

A close analysis of the representations made in regard to the distribution of electrical appliances by wholesale hardware merchants indicates that the main factors about which complaint was made resulted from the more active competition in this field with the return of a buyers' market. Under resale price maintenance, with margins protected at each stage of distribution, there was not the same incentive for dealers to seek the most economical methods of purchasing, because they did not have to face a competitive retail price. Also, with the return of a buyers' market, there appears to have been a tendency in the case of larger appliances particularly, for manufacturers to deal more directly with retailers. Obviously, when a dealer is buying in carload quantities, direct shipments from the factory become the most logical form of purchase, but the trend toward more direct manufacturer-dealer selling has extended considerably beyond this type of transaction. Several members of the delegation representing The Retail Merchants' Association of Canada, British Columbia, thought that there was opportunity for further reduction in the spread between the manufacturer's and the retail price, by the elimination of what was considered as unnecessary duplication in wholesale distributive functions (pp. 2824, 3116, 3117).

The recent difficulties faced by the jobber of cigarettes have several aspects which distinguish the problems in this field

from the trade in consumer durable goods. The position of the specialized tobacco jobber is discussed, therefore, in the section of the report dealing with the trade in cigarettes.

4. In Relation to Manufacturers

(a) Maintenance of Goodwill of Consumers and Dealers and of Adequate Numbers of Retail Outlets

Among the detrimental effects which price-cutting was alleged to have upon the manufacturer, the damage done to the reputation of his products and to the consumer's goodwill toward his brand name were factors which were stressed in representations made to the Commission by manufacturers' associations and by individual manufacturers. The various ways in which it was contended the confidence of the buying public in brand names might be undermined have been described in previous sections and it may be recalled that the ultimate effect feared from the loss of such goodwill was that of failing to obtain as large a volume of sales of branded articles as would be obtained if retail prices were maintained at the levels suggested by manufacturers. The Commission was not furnished with clearly established instances of the loss of sales resulting from the decline of public confidence because of price-cutting, and some manufacturers contended that the period of competitive pricing on the part of retailers had been of too short duration to demonstrate in statistical form the effects which were envisaged. On the other hand, a number of examples of price reductions on specific articles were given which showed that buying by the public of branded goods had been greatly stimulated.

The Canadian Association of Consumers expressed the following opinion on the question whether price reductions damaged the prestige of a branded product (p. 1741):

> "We doubt if this is so, at least to any significant extent. When a branded product gets consumer preference, it is logical to believe that this choice is not predicated on price alone, - since non-branded articles are usually cheaper - but rather on its known quality or alternatively its more efficient promotion. It is hardly in human nature, we believe, for consumers to reject an article on which these two factors are maintained; merely because it is selling at a lower price. Moreover, memory of previous prices is usually short-lived except where the difference is dramatic - as with food now and thirty years ago."

Branded goods which are frequently chosen as gifts were

suggested by some manufacturers and dealers as those which might be most likely to lose public favour if sold at cut prices. The Small Appliance Department of the Canadian General Electric Company Limited stated that such disfavour was not regarded as a major damage from price-cutting, but it was viewed as a minor type of damage. In a recent article in the Harvard Business Review, entitled "What To Do About the Discount House"[1] the following comments were made as to the danger of a branded product losing prestige because of price-cutting:

> "(3) The fact that a manufacturer's product is sold by discount houses may cause it to lose prestige in the mind of the consumer. This is a threat that seems to have lost much of its scaring power during recent decades. Undoubtedly the fact that a product is sold in a cut-rate store may cause some consumers to whom price and quality are entirely synonymous to depreciate it in their own minds. This is especially true of articles that are bought heavily as gift items. But it is probably true that the great majority of consumers rely for quality primarily on the manufacturer's brand and only secondarily on the word or standing of the retailer who sells the product.
>
> The manufacturer's protection against this danger lies in making a good product, providing a sound and efficient warranty and service system, and advertising the entire package widely and heavily to the consumer market."

Professor Mund's experience in this connection is cogent. When question onthe subject, he said (p. 3237):

> "In all my studies I never have found a good example of low markup selling or low price selling which injured the brand name of a branded product. I have found no examples of that at all. All my studies show that low prices for branded merchandise simply encourage people to run and get them."

Various factors, such as the shortage of supplies in the immediate post-war period and again during part of the Korean war and the consumer credit controls in effect at various times, were referred to by manufacturers, particularly of major appliances, as having made it difficult to build up adequate dealer organizations. On the other hand, there were many indications of the rapid and large growth since the war in the number of stores handling household appliances. It was suggested by manufacturers that the imposition of the ban on resale price maintenance, at the end of 1951, came at a time when it would have been possible to get greater

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(1) Professor Ralph S. Alexander and Richard M. Hill, Harvard Business Review, January-February, 1955

dealer coverage, but the degree of price-cutting made possible by the legislation has created conditions which prevent manufacturers from interesting additional dealers in handling their products (p. 956). It may be noted that, on the whole, the trade in appliances appears to have increased in the latter part of 1952 and that this expansion continued in 1953.

In the case of refrigerators, the argument was made by some manufacturers that price-cutting by retailers selling in large volume had made other dealers unwilling to take on or to continue handling their products, and that this had resulted in fewer refrigerators being sold than otherwise would have been the case (p. 980). Similar views were expressed in regard to newer products, such as automatic washers and dryers, which retailers would like to handle but feared to take on because low markup retailers might decide to feature such lines and establish prices which regular dealers could not meet. This would mean that dealers who had persuaded the public as to the advantages of the newer appliances would not get the benefit of their educational work. In addition to discouraging the entry of new dealers, price-cutting was alleged to be responsible for forcing an increasing number of retailers into bankruptcy. If low markup retailers of appliances were to be permitted to continue to cut prices, more dealers would be forced out of business, fewer would be left to do the necessary educational sales work, and the manufacturing industry would decline because of inability to market new products (p. 928).

Although the disappearance of dealers through business failure was advanced more by way of general argument, as possibly creating a future situation which might limit the retail outlets available to manufacturers, more immediate harm was seen in the unwillingness of dealers to continue to stock and display goods on which margins had been reduced by price-cutting to what were regarded as unsatisfactory levels. This situation was reported by some manufacturers to be already apparent in the case of small electrical appliances. The bulk of the sales of Sunbeam Corporation (Canada) Limited was said to be made in anticipation of principal gift occasions, such as Christmas. The Company relied on display in a large and wide variety of retail outlets to secure adequate response by purchasers. If dealers as a whole were not assured of a satisfactory profit they could not be persuaded to stock in advance or to display the product at the best selling seasons. The Sunbeam Company also contended that in the introduction of new products, such as its automatic frying pan, the best results were secured if company advertising could be linked with general display by all dealers in a particular locality. The Company gave an illustration of this technique in one city in the United States where, under the state fair-trade law, the dealers could be assured that a uniform price prominently featured in the advertisement would be maintained. In the District of Columbia, where dealers were free to set their own

retail prices, it was claimed that mass support of retailers would not be forthcoming, because retailers whose operating costs made it necessary for them to seek the margin suggested by the manufacturer would be afraid that after devoting their efforts to the promotion of the new product, they would get little results, as consumers would buy at the lower prices available at discount houses.

Canadian General Electric Company Limited contended that many retailers, including some large department stores, had discontinued handling its products. The example was given of Eaton's College Street store in Toronto, which in 1949 sold 6% of all the Company's floor polishers purchased throughout Canada, and which at the time of the hearings (June, 1954) was no longer handling them (p. 843).[1] It was also argued that retail hardware stores which used to account for a substantial proportion of small appliance sales, had in many cases discontinued handling them or were not promoting them aggressively (p. 843).

Although small appliances were most frequently referred to in relation to dealers refusing to handle products when these became the subject of active price competition, major appliances and other products were mentioned in the same connection. The Canadian Electrical Manufacturers Association stated that operating costs of department stores exceeded 30% and that many of such stores refused to handle articles unless they could obtain a minimum margin of 33-1/3% (p. 948).[2] The Canadian Wholesale Hardware Association said that there was no question but that manufacturers had had to cut back production as a result of price-cutting at the retail level (p. 490). While manufacturers might benefit in the short run through increased sales resulting from price reductions, their volume would suffer in the long run (p. 535), because a reduction in the number of outlets would offset the appeal of lower prices in that there would be fewer stores in which to buy (p. 530). The B. C. Retail Hardware Association reported that a questionnaire sent to 187 of the 380 independent hardware retailers in the province, to which 62 replies were received, showed that only 47% of those replying still stocked major appliances, though 95% continued to stock

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(1) Subsequently the Commission was informed by the Canadian General Electric Company Limited that Eaton's in Toronto had resumed purchases of its small appliances and had featured some of them at low prices. Floor polishers were included in one sale and the number sold was greatly in excess of the number involved in the previous sale by Danforth Radio Company Limited referred to in an earlier chapter of this report.

(2) Dominion Bureau of Statistics Monthly Reports of Retail Trade show that department stores in Canada increased their sales of major appliances by 12% in 1953 compared with 1952, and by 11% in 1954 compared with 1953.

small appliances. A representative of The Easy Washing Machine Co., Ltd., referred to an occasion when the Company reduced the price on certain models of washing machines in order to clear its stocks. The large dealers in Toronto successively reduced the price on these models, it was alleged, until one of them was selling below his purchase cost. Many customers and dealers consequently cancelled their orders, and it was claimed that as a result of this incident the Company lost 30 dealers (p. 1064). An indication that there may be a similar concern among some manufacturers in other than the appliance field was given by one witness who alleged, in connection with the sale of bread, that when a large chain store cut the price of bread in Winnipeg, independent retail grocers ceased to handle it because they found they were subject to less criticism by the public for carrying no bread at all than for charging a price so much higher than that available in chain stores (p. 3524).

In addition to the possibility of a loss of sales volume because dealers seeking a higher margin would discontinue handling products selling with low markups, some manufacturers contended that the problem of marketing their products would be increased still further because dealers would turn to goods on which a higher markup could be obtained. This would encourage the sale of private brands and less well-known merchandise as well as that of imported goods on which the retailer would not be subject to the same degree of competition as in the sale of nationally advertised brands. Some reference has already been made to contrary views that retailers would have difficulty in supplanting popular branded articles with goods less well-known to the public. One witness said that dealers in an effort to obtain lines which would not be cut in price, were importing on an extensive scale from the United States (p. 3018). Another said that, particularly in British Columbia, merchants who were unable to compete with the low prices advertised on some products, were turning to imported goods. One manufacturer stated that certain large department stores had discontinued selling national brands of washing machines, because they could not operate on a margin of 17% or 18% which was the level set by low markup dealers, and were therefore importing competing lines from the United States, and selling them as private brands (p. 1078).

Although manufacturers were requested during the hearings to furnish the Commission with information as to the decline in the number of dealer outlets in markets where price-cutting was particularly in evidence and the consequent effect on volume of sales, the Commission was usually informed either that the developments were so recent that no positive evidence was yet available or that the goods were distributed through wholesalers, as in the case of small appliances, and the manufacturer did not have records of the number of retailers supplied by wholesalers. In the case of Sunbeam Corporation (Canada) Limited it was estimated that there were 20,000 retailers in Canada handling Sunbeam products (p. 103). These were sold exclusively through wholesale distributors and the facts as

to changes in the number of retail dealers were therefore initially beyond the knowledge of the Sunbeam Corporation. In addition, since some of the wholesalers in Toronto, which was regarded at the time of the hearings as the centre of price-cutting activity, supplied dealers outside that area, information obtained from them about the number of dealers who had ceased stocking Sunbeam products could not be related specifically to the City of Toronto. Information as to value of sales would have to be similarly qualified, besides which, the Company did not wish to reveal to its competitors its sales figures in specific areas. Furthermore, Sunbeam Corporation did not wish to take any steps to have retailers confirm the fact that they had discontinued selling Sunbeam appliances, because it was hoped this might only be a temporary decision and that they could again be interested in handling the Sunbeam line. For these reasons the Company did not furnish the Commission with any statistics as to number of retail dealers or as to sales, although it was mentioned that at the time of the hearings the sales of the Company were still on the increase (p. 77).

Some manufacturers referred to active opposition of retailers which was of a more insidious nature than a policy of unwillingness to demonstrate, promote or stock articles on which the retailer regarded the margin as too low. Such opposition could take the form of keeping the branded product in disfavour out of sight and of pushing a rival product, or might extend to attempts to discredit the branded product. Sunbeam Corporation (Canada) Limited argued that dealers were attempting to switch buyers' preferences by persuading them that the quality of Sunbeam products had declined (p. 55). In these circumstances the Company could take no effective action to overcome such unwarranted criticism of the quality of its products, as it could do, by improving the quality, if there were any actual defects. Canadian General Electric Company Limited also argued that retailers who were unwilling to handle its products, while other retailers were selling them at low prices, made disparaging statements about them in order to sell brands which provided a wider margin (p. 842). Some other witnesses advanced a similar argument (pp. 786, 1654, 3021). Aside from the fact that it cannot be an easy matter to switch customers from such highly advertised and well-known lines as those of Canadian General Electric and Sunbeam (as was indicated by one witness who said an attempt had been made by his firm to substitute another brand for the G. E. floor polisher with little success because the Company was so well known and highly respected), it would be extremely difficult to assess the effect of dealer opposition of this kind because of the manner in which it would be expressed. It is possible that if employed by many dealers it might antagonze buyers and create stronger support among consumers for the product.

(b) Competitive Influence on Distribution Policies

The effects which free competition at the retail level might have upon the distribution policies of manufacturers and upon the structure of retail trade appeared to be a matter of concern to many manufacturers, particularly in the field of electrical appliances. The fear that the changes which might be brought about by more active price competition among retailers might be to the disadvantage of the manufacturer appeared to be based on the belief that such changes would take place without the manufacturer being in a position to influence particular developments affecting the distribution of his own products, or being able to maintain the system of distribution which he considered most effective in securing the largest sale of his goods.

One development which was frequently mentioned in this connection was that in certain metropolitan markets the volume of business done by a few retailers operating on low markups had become an important part of the trade. Except, perhaps, with respect to certain large department stores such a situation represented a new development in the appliance field, although in other fields as, for example, groceries, several types of large retail organizations occupy important positions. In the case of large department and chain stores, the same organization may have operations extending over wide areas and thus be an important buyer in many districts. When individual retailers become distributors on a very large scale a few accounts become much more important to the manufacturer than previously was the case. In these circumstances the manufacturer may feel that his dealings with the large retailer may possibly become more a matter of bargaining than the independent determination of the manufacturer's distribution policy. In the representations made by the Canadian Manufacturers' Association it was argued that it was a far healthier situation for the manufacturer to have a number of outlets rather than to be at the mercy of one (p. 75). In some large markets it was suggested that if one dealer was in a dominant position saleswise, the manufacturer might eventually find himself dependent upon the efforts of that one dealer who, however, would be under no obligation to remain a dealer for the manufacturer and at any time might decide to discontinue handling his products (p. 57). Arguments by some other witnesses were to the same effect. For example, the Canadian Association of Radio & Appliance Dealers (Victoria Branch) said that, when a manufacturer's products were widely cut in price in a particular market, they ended up with one dealer who sold them in substantial volume, but in the process many other dealers had become antagonistic to the manufacturer. Such a development was not welcomed by the manufacturer (p. 2574). In the representations of the Canadian Wholesale Hardware Association it was argued that concentration of retail business would eventually lead to retail "monopolies"

which would be in a position to dictate to the manufacturer (p. 1642). The bulk of the refrigerator business in Toronto was stated to be in the hands of six retailers. These very large dealers, it was argued, were likely to go to the manufacturer and demand an additional discount under the threat of taking up a competitive line (p. 476). It was obvious that these large individual retailers were in active competition with each other, and also with other large organizations, such as the department stores, as well as with the many smaller retailers.

One argument of the Canadian Home Laundry Manufacturers' Association seemed to be premised upon the continued existence of rival dealers, rather than their disappearance, as it was contended that one result of price-cutting was to put excessive pressure upon the manufacturer for lower prices. This was the case because the advertising of large price reductions by some retailers led other dealers to demand that the manufacturer reduce his price to them, so that they would be in a better position to compete. It is generally accepted that, under a system of resale price maintenance, manufacturers are less likely to experience demands of this kind. It would be logical to expect that, in the absence of resale price maintenance, retailers would become more active in attempting to secure the lowest possible buying prices from manufacturers or wholesalers.

Several manufacturers argued that the inability to assure retailers a guaranteed markup made it difficult to maintain a system of distribution which was dependent upon having the greatest possible number of retailers displaying their products. Canadian General Electric Company Limited stated that in order to achieve low unit manufacturing costs it required large scale production, and that to dispose of the resulting great volume of products, the company needed to have exposure of them in a great many dealers' stores. Prohibition of resale price maintenance penalized Canadian General Electric for having done a good job in producing a well-known quality product, because its branded goods were being used as leaders and the low prices at which they were sold discouraged many dealers from continuing to handle them. The consequent reduction of dealer outlets had not yet proceeded so far as to produce a loss of sales volume but eventually it could be expected to do so (p. 833). Similarly Sunbeam Corporation (Canada) Limited argued that in order to obtain volume, it needed a network of dealers actively promoting its products so that advantage might be taken of impulse buying (p. 82).

The greater share which competition in the market now plays in the determination of retail prices appeared to be a matter of concern to a number of manufacturers. Canadian General Electric Company Limited said that the prohibition of resale price maintenance transferred the right to establish prices from the manufacturer to one or two retailers in each marketing area (p. 838). Another witness said that in any market, the lowest generally known or advertised price became the maximum price which meant that the price-cutter

rather than the manufacturer fixed the price (p. 1154). One result of this, it was suggested by another witness, was that there was a greater likelihood of "price-wars" developing, into which the manufacturer might be drawn to support the distribution of his products, if the goods of competing manufacturers were advertised widely at prices well below those at which his products were offered to the public (p. 765). Still another witness argued that the prohibition of resale price maintenance made it possible for any disaffected dealer to destroy the manufacturer's price structure by using his products as leaders (p. 2758). It was the opinion of Northern Electric Company Limited that to deprive a manufacturer of the knowledge of the price at which his products would be sold to the consumer, was to deprive him of one of the tools to determine what his scale of production should be and what his costs would be (p. 1551).

The Canadian Electrical Manufacturers Association argued that the manufacturer of appliances incurred a large contingent liability in extending warranties on his goods, and he should be allowed to safeguard his interests by determining himself what distribution channels and methods he would use (p. 931). The Canadian Home Laundry Manufacturers' Association said that manufacturers in the industry needed complete freedom from any measures which might prevent them from maintaining retail prices or otherwise determining their marketing arrangements, in order to serve the public and to compete with imports (p. 1058). On behalf of Sunbeam Corporation (Canada) Limited, it was argued that Sunbeam's liberty to restrain dealers from reducing prices was opposed to the dealers' liberty to sell at whatever prices they chose, and a decision had to be made as to which liberty was more to the advantage of the public (p. 1112).

The arguments that the absence of resale price maintenance made it impossible for the manufacturer of branded goods to continue with an adequate distribution system appeared to give little weight to the need for adjustments in distribution methods or in promotional work, which must be made from time to time. When there are significant developments at one trade level it is only to be expected that some adjustments may have to be made at others, or that some time must elapse before the various sections in the chain of distribution are adapted to new conditions. In an article in Fortune of March, 1955, dealing with the operations of a leading food manufacturer in the United States, a quotation is given from a recent annual report of another manufacturer of food products, which pointed out that manufacturers must place more reliance on advertising because they "can no longer expect the grocer to help 'sell' [their] products to the extent he did only a few short years ago."

(c) <u>Effect on Sales Volume</u>

Chiefly in relation to electrical appliances it was argued,

in the representations made to the Commission, that loss-leader selling or selling on narrower margins at the retail level had had a depressing effect on the sales of manufacturers or could be expected to have this effect in the future.

It has already been mentioned that manufacturers were unable to furnish the Commission with statistics as to sales which could be taken as clearly indicative of a decrease in the volume of shipments resulting from branded goods being sold at low prices. In certain submissions references were made to the experience of an individual manufacturer or to an industry in particular market areas, or to the trend of imports, as providing some information as to the results which might be produced by price-cutting. Such information is considered in this section with other available information which may be related thereto.

It was evident from copies of advertisements which were filed with the Commission as examples of the featuring of electrical goods at retail prices substantially lower than those suggested by the manufacturers, that in spite of television having so recently made its appearance in Canada, television sets were frequently featured in the advertisements of low-margin retailers. While some manufacturers and dealers were doubtful whether selling of this kind was broadening the market for television sets even at the present time, in view of the great interest of the public, the extremely rapid growth of production certainly did not indicate any falling off in demand because of the availability of television sets at lower prices. A representative of The Radio-Television Manufacturers' Association of Canada had an open mind on the question of the immediate broadening of the market through lower prices, but remained dubious as to the long run effects of price reductions by retailers. His comments on this point are contained in the following portion of the transcript (pp. 1834-1836):

> "MR. GERIN-LAJOIE: The question comes up, particularly after hearing the representatives of the discount houses, whether lower prices by the discount houses do not broaden the market generally speaking and call for a high production and higher circulation of goods -- I should not say 'call for', but have that as a consequence.
>
> MR. FINLAYSON: Again, sir, the reply will be somewhat general. It is our view that the inclusion of any new method, or the extension of an old method, may have a temporary effect of broadening the market, but we are inclined to doubt if over a period of years it has any material effect at all.
>
> MR. WHITELEY: What is that?

MR. FINLAYSON: The question, as I understood it, was whether the intrusion of discount houses and cutting prices has broadened the market for goods, and I am trying to say that we are dubious as to whether the broadening is of anything more than an interim character.

MR. WHITELEY: Are you dissociating that from the change in price?

MR. FINLAYSON: Yes, I am trying to do that. What I am trying to say is, if somebody brings out a low price, and that thing becomes a definite and solid pattern, there may be something to it, but we in our industry have not had enough experience to say that over a period of 10 years we will, in fact, sell more television sets. That is what I understood the question was. We would not like to say it is so.

MR. WHITELEY: I notice from advertisements that on occasion some initiative is taken by a manufacturer to make quite a reduction in regard to a particular model. Do you say that is not done in order to widen the market for that model?

MR. FINLAYSON: Oh yes, but what I am trying to say is, we are a little dubious as to whether one can say that what is going on now, as I think your counsel has suggested, the intrusion of discount houses in the television market will produce a long-term broadening of the market. I will say this, that obviously anything that will hold down the general level of prices and still permit the manufacturer, wholesaler and retailer to make a reasonable profit will obviously broaden the market.

THE CHAIRMAN: And if prices in the discount houses continue to be over a long period substantially lower than they are in other retail establishments will not that have the very same effect in inducing a number of people to buy who otherwise would not have bought?

MR. FINLAYSON: If after a number of years a new pattern is established, I think the answer must be yes."

The following are the figures for factory sales of television sets and radio receiving sets as given in an earlier table:

Factory Sales

	Television Sets No.	Radio Receiving Sets No.
1950	29,623	758,619
1951	39,185	574,232
1952	137,236	568,884
1953	366,498	620,800
1954	623,586	487,237

It is of interest to note that although the market for radios has been regarded as near the saturation point, in trade terms, for some years, the volume of sales increased in 1953, and, although showing some decline in 1954, remained large in spite of the great increase in the sale of television sets.

Sunbeam Corporation (Canada) Limited conceded that up to the end of 1953, the Company's sales showed an increase, even though price reductions had been made by some retailers (p. 1147). Some of Sunbeam's sales figures showed increases even in those areas where it was felt that damage was being done by price-cutting (p. 62). Increasing sales were said to be the result of many things, including the introduction of new products (p. 76), but it was argued that the major reason was consumer satisfaction with Sunbeam products which would take a considerable time to break down (p. 62). Consumer goodwill and satisfaction had so far outweighed the adverse effects of price-cutting but the Company was afraid that the possibility of damage had only been deferred (p. 77). Sunbeam suggested increased sales towards the end of 1953, might have been the result of over-stocking for the Christmas season by dealers and the carrying of heavy inventories into the new year (p. 80). In the Company's opinion the results of surveys since 1953, in the Toronto area, although not showing any reduction in the number of units sold, indicated that the Company was on the verge of serious trouble, because the volume of retail sales was shifting to the low markup dealers. A shift of this kind was said to be the first stage in the familiar experience of price-cutting in the United States (pp. 1126, 1147). A representative from the parent Company stated that in the United States Sunbeam's products were in short supply up till 1949, and there had been no problem with price-cutting even in the District of Columbia, which has no fair trade law, enabling the manufacturer to fix retail prices, as is the case in 45 states with such laws. About 1950, the supply situation became easier and price-cutting began to break out in the District of Columbia. At that time, a total of 650 stores in the area were said to handle Sunbeam products. Subsequently as price reductions continued, sales of Sunbeam products shifted to the discount houses and by 1954, 20 of them were handling 90% of Sunbeam's sales in the District. It was said that sales of Sunbeam products in the District of Columbia dropped by 11% in 1953, as compared with 1952, whereas in the country as a whole they increased by 15%, in

the same period (p. 1127). These sales figures were stated to relate to Sunbeam's sales to wholesalers in the District of Columbia, and in supplementary information given after the hearings it was indicated that these figures would not be affected by shipments to wholesalers in neighbouring market centers, such as Baltimore.(1) The Commission does not know whether any special circumstances, such as possible curtailment in government staffs, affected retail trade in the District of Columbia in 1953, and the Company did not furnish information as to sales of the Company's products in the states having no fair trade laws, compared with those that have. It is the case that the Sunbeam Corporation in the United States is strongly opposed to the sale of its products at less than its suggested retail prices, and takes active steps in those states where legal action is possible to secure observance of such prices. While the representative of the Company stated that supplies were not withheld from retailers in the District of Columbia selling at cut prices, it would not be expected that Company promotion would be as active in their behalf as in those areas where resale prices were being observed.

Canadian General Electric Company Limited said that up to the end of 1953, the Company's sales volume in small appliances was about normal despite a reduction in the number of outlets willing to stock and display its products (p. 833). Since the end of that year however, the situation had changed and in the Company's opinion sales were now being affected by price reductions at the retail level (p. 834). The following table sets out information supplied by Canadian General Electric, at the request of the Director of Investigation and Research, covering unit sales of lightweight irons, electric kettles and floor polishers by provinces for the years 1950 to 1953, inclusive. Because the Company did not wish to make public the actual sales figures, the table uses index numbers, with total sales in the case of each product shown as 10,000 for the year 1950.

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(1) It is noted that sales of household appliance and radio stores, as shown in the monthly reports of retail trade, published by the U.S. Department of Commerce, declined in the Washington, D.C., metropolitan area by 5% in 1953, compared with the previous year, while sales of such stores for the United States increased by 4%. In 1954, the situation was somewhat the reverse. Sales of household appliance and radio stores in the Washington area were 6% higher than in 1953, but a decrease of 3% was shown for the country as a whole.

Table 11. - Canadian General Electric Company Limited, Sales of Certain Electrical Appliances by Provinces, 1950-1953

	B. C.	Alta.	Sask.	Man.	Ont.	Que.	N. S. & Nfld.	N. B.	TOTAL
F80 IRONS									
1950	755	577	430	845	4,875	1,742	475	301	10,000
1951	486	493	332	643	3,645	1,267	283	223	7,372
1952	492	619	428	665	3,809	1,619	333	228	8,194
1953	556	601	479	627	3,915	1,493	417	219	8,307
K40-K42 KETTLES									
1950	1,051	211	457	956	5,283	972	691	380	10,000
1951	837	211	395	824	4,112	912	381	196	7,868
1952	1,025	264	484	730	4,086	1,147	423	212	8,372
1953	1,058	345	598	878	5,117	1,125	568	306	9,995
CS11 POLISHERS									
1950	1,074	912	241	616	5,717	1,037	329	74	10,000
1951	885	996	205	785	6,166	1,210	374	68	10,689
1952	1,266	1,343	290	917	7,065	1,013	443	73	12,411
1953	1,517	1,437	339	1,064	6,702	1,671	443	112	13,286

The foregoing table shows that sales of lightweight irons and electric kettles declined in 1951, compared with 1950. It will be recalled that consumer credit controls were imposed during the second quarter of 1951, and remained in effect until the beginning of the second quarter of 1952. These may have had some influence in reducing sales during part of 1951, and 1952. The legislation banning resale price maintenance did not become effective until the end of December, 1951. It will be seen that sales of the three small appliances by Canadian General Electric increased in each of the two years following 1951, and in the case of floor polishers there was an increase in 1951, compared with 1950. There is little indication that Ontario and British Columbia, despite the fact that Toronto and Vancouver were regarded as the centres of price-cutting activity, have significantly different sales records from Saskatchewan and the Maritime Provinces, where it was suggested that little price-cutting had taken place (p. 825). The table represents shipments by the manufacturer and not actual retail sales. Because Canadian General Electric follows the practice of having several distributors in each trading area whose territories overlap, separate sales figures for the principal metropolitan areas could not be provided.

The opinion that continued price-cutting would eventually reduce sales was said to be based on the experience of Canadian General Electric in British Columbia since 1953. The following submission was made in the Company's brief:

> "In British Columbia a very serious situation has developed because of the consistent loss leader attacks by Wosk's Ltd. of Vancouver (details on page 9) who advertises in both Vancouver newspapers and ships anywhere in the province for a small charge. In contrast, in Alberta there have been relatively few instances of loss leadering of our products.
>
> That this Vancouver situation is playing havoc with our sales is shown from a comparison of our total shipments into British Columbia and Alberta for the first quarter of 1954 compared with [the first quarter of] 1953. Assuming 1953 shipments to each province to be 100, 1954 shipments are as follows:

	Iron	Kettle	Polisher
Alberta	123	101	121
British Columbia	46	98	51

> British Columbia is a much larger market than Alberta. Department of Trade and Commerce and DBS statistics indicate that in 1951 there were 289,000 domestic electric customers in B.C. compared to 148,000 in Alberta. Yet in the first quarter of this year we shipped substantially more Featherweight irons

and polishers into Alberta than we shipped to B. C. Kettles are not included in the comparison since Alberta is a poor market for kettles due to the prevalence of natural gas."

When the brief was being presented, the attention of the representative of Canadian General Electric was drawn to the provincial sales figures previously submitted, and which were not included in the brief. He admitted that he had overlooked the fact that from 1951, to 1953, sales of featherweight irons had been larger in Alberta than in British Columbia, and in 1951 and 1952, the same situation had prevailed in the case of floor polishers.

The information given in the previous table as to sales of the three products in the years 1950 to 1953, inclusive, had been submitted first on a monthly basis so that it was possible to relate the sales experience in the first quarter of 1954, with the same quarter in 1953, and earlier years. It was found that sales of featherweight irons in British Columbia in the first quarter of 1953, had been more than twice as great as in the first quarter of 1952. In the case of floor polishers, sales in Alberta in the first quarter of 1953, were less than half what they were in the first quarter of 1952. Sales by the manufacturers are, of course, for the purpose of replenishing wholesalers' or dealers' stocks, and the monthly sales figures for the years 1950 to 1953, show that quite large fluctuations occur in different periods.

Canadian General Electric Company Limited also argued that the fact that industry sales of electric floor polishers increased by about 65% from 1950 to 1953, while the Company's sales increased by only about 25% (actually 33% according to sales data supplied to the Commission) indicated that the Company was detrimentally affected by the widespread use of its floor polishers as leaders (pp. 830, 870). Other manufacturers had been giving more attention to the production of floor polishers and it was admitted that the fact that a new manufacturer had begun making floor polishers during the past year would have some effect on the relative position of Canadian General Electric (p. 871).

It has been generally recognized that power washers have been among the first appliances most widely purchased by householders and the estimates presented earlier in the report as to the degree of market saturation show that by 1950, washers stood highest, apart from radios, among the major appliances.

The Canadian Home Laundry Manufacturers' Association contended that statistics of the production and shipments of washing machines indicated that the absence of resale price maintenance had had a depressing effect on the volume of business of the industry. The argument was presented as follows (pp. 1053-1055):

"The result of no price maintenance is to destroy the basis for list prices and discount procedures which has resulted in

decreasing the volume of business done, bringing about unemployment in the Industry, leaving the public confused, and placing the capital investment and business good-will of manufacturers, wholesalers and retail merchants in jeopardy.

As an example, according to published information by the Dominion Bureau of Statistics, in 1921 a total of 24,892 washing machines were produced for a total value of $964,662.00. This quantity of production was consistently increased until 1950 when a total of 300,798 washing machines were produced for a total value of $29,162,241.00. This shows a natural growth of one product only, manufactured by the Home Laundry Equipment Industry in Canada during a period of years when manufacturers' list prices and control of marketing conditions went unhampered. During the years 1951 and 1952, under the Restrictive Trade Measures of the Combines Act, there were 245,110 washing machines produced for a value of $25,845,908.00 and 259,253 units produced for a value of $27,319,313.00 respectively. In 1953 our own Association statistics show a production of 249,745 washing machines. I might say, there, Mr. Chairman, that we do not have the value for the 1953 figures because we do not show the values in our industry. I am showing here in 1952 the volume of production was considerably reduced in units as compared to 1950 and that there was a further reduction in units in 1953 over 1952. The experience of the two years under this legislation indicates clearly the reduction in volume of units produced and sold as compared to previous years, when complete freedom of distribution was permitted. The effect of this legislation as shown, is all the more remarkable when one considers that the industry had planned and fully expected increasing production and sales during this period. The above statistics show that this trend was reversed at the inception of the legislation producing a decrease in sales rather than an anticipated and planned steady increase."

This argument appears to overlook the fact that the peak year for production of washers in Canada was 1949 and that the trend was downward for two years before the ban on resale price maintenance. Production of washing machines in Canada increased in 1952, compared with 1951 and, though the trend was downward in 1953, the reduction in number of units manufactured was less than 3% while the value was actually higher. The preliminary figures for 1954 show a somewhat larger reduction. The available figures for number and value of washing machines made in Canada from 1947 to 1953 are given in the following table:

Table 12. - Number and Value of Washing Machines Manufactured in Canada, 1947 - 1953

	Electric		All Types	
	Number	Value $	Number	Value $
1947	193,468	16,809,878	220,039	19,108,006
1948	296,800	27,573,419	334,473	31,253,680
1949	304,273	27,957,728	346,254	32,501,441
1950	283,236	27,160,034	301,110	29,162,241
1951	225,100	25,021,074	236,730	26,445,866
1952	242,758	26,278,816	253,583	27,547,065
1953	237,705	26,896,977	247,824	28,061,606

Source: Dominion Bureau of Statistics, "The Electrical Apparatus and Supplies Industry, 1953".

In the representations made by the Canadian Home Laundry Manufacturers' Association, reference was made to varying trends of sales of washing machines in different geographical areas. At the time of the hearings figures were given for sales during the first four months of 1954. Reports published subsequently by the Dominion Bureau of Statistics show shipments of washing machines by geographic areas for the calendar year, 1954. The trends in sales as given by the Association and in shipments by the Dominion Bureau of Statistics are as follows:

	Sales Jan.-Apr., 1954	Shipments Jan.-Dec., 1954
Maritimes -	12% lower	15% lower
Quebec -	8% lower	10% lower
Ontario -	14% lower	7% lower
Manitoba -	12% lower)	
Saskatchewan -	14% lower)	21% lower
Alberta -	15% lower)	
British Columbia -	9% higher	4% higher

Representatives of washing machine manufacturers said that the worst area for price-cutting was Toronto. Price-cutting was becoming more of a problem in Winnipeg but was not yet a serious problem in British Columbia. The opinion was expressed that the lower sales on the prairies were the result, not of price-cutting but of the difficulties being experienced in the marketing of wheat (p. 1077). It is difficult to see from the percentage changes in the above table any pattern showing a relationship between price-cutting and lower sales. For example, all the information the Commission received indicated there was relatively little price-cutting in the Maritimes, yet sales there fell more than they did in Quebec and, for the year as a whole,

shipments to Ontario declined less than to Quebec.

While the total production of washing machines in 1954 was less than in 1953, The Easy Washing Machine Co., Ltd., was reported in the Montreal Gazette of March 1, 1955, as having had record sales in 1954, with an increase of 21% over the preceding year. For the industry as a whole, production and shipments of automatic type washers increased in 1954, although decreases were shown for conventional and gasoline types.

The increased imports of refrigerators in the years 1952 and 1953 were referred to by the Canadian Electrical Manufacturers Association as an indication that price-cutting was having a depressing effect on the volume of sales of Canadian manufacturers of refrigerators. The Association submitted a table to the Commission showing the imports of refrigerators by provinces for the years 1951 to 1953 and for the first three months in 1954. The figures were stated to have been supplied to the Association by the Dominion Bureau of Statistics. In the following table the figures presented by the Association for the three full years are given. These include domestic or store refrigerators and home or farm freezers:

Table 13. - Imports of Refrigerators, Electric, Domestic or Store, Completely Equipped or Not, N.O.P. and Home or Farm Freezers, Electric

Province	1951	1952	1953
Nova Scotia	1,278	2,888	7,753
Prince Edward Island	3	4	60
New Brunswick	5,445	7,388	7,546
Quebec	28,290	53,706	53,192
Ontario	30,630	66,407	60,891
Manitoba	14,040	18,873	23,400
Saskatchewan	6,496	10,528	13,219
Alberta	8,929	17,714	23,695
British Columbia	12,212	24,829	30,035
Newfoundland	227	169	260
Total Canada	*107,550	202,506	220,051
* Revised Total:	109,624		

It will be noted that the greatest increase in imports occurred in 1952. While the total for Canada as a whole was higher in 1953 the quantities imported into Quebec and Ontario were lower in 1953 than in 1952, although increases were shown for all other provinces. Again it appears impossible to find in these figures any relationship between the degree of price-cutting and the trend of imports. If any pattern could be drawn it would appear to be contrary to the argument advanced.

It will be noted that the statistics in the table on the preceding page cover domestic and store refrigerators and also home and farm freezers. The figures for the two groups are not available separately prior to 1953, but in that year 35,302 freezers were imported, of which 24,060 were imported in the four Western Provinces. The imports of freezers into British Columbia alone totalled 8,864 in 1953, which may be a factor in the increase for that year shown in the table.

Information now available as to the level of activity in the electrical appliance industry indicates that in spite of declines in some branches of the industry in 1953, output as a whole was considerably greater than in 1952.

Financial statistics are not available for the household appliance industry as such, but statistics for electrical machinery and equipment companies show that operating income in 1953 reached a high level. The following figures are based on the annual summary of corporate financial statistics prepared by the Bank of Canada, which includes a survey of the financial statistics of 24 electrical machinery and equipment companies for the period 1947 to 1953.[1]

Table 14. - Financial Statistics of Electrical Machinery and Equipment Companies, 1947-1953

	Net Operating Profit before Depreciation	Net Income to Stockholders	Shareholders' Equity	Net Income to Shareholders as % of Shareholders' Equity
	(Millions of Dollars)			
1947	26.2	12.3	118.3	10.3
1948	33.0	16.0	134.6	11.8
1949	38.3	21.0	142.4	14.7
1950	50.3	26.1	155.5	16.7
1951	54.0	22.3	170.7	13.0
1952	60.5	25.4	194.2	13.0
1953	66.0	33.8	215.8	15.6

Although the general trend in production of household appliances was downward in 1954, some branches of the industry, especially television, increased production and the general indexes show an upturn at the end of the year.

The Dominion Bureau of Statistics publishes a monthly series showing indexes of value of shipments for Electrical Apparatus (consumer durable goods), including radio and television, batteries, refrigerators, vacuum cleaners and appliances and for the sub-group, refrigerators, vacuum cleaners and appliances. The following tables show the indexes for the group and sub-group by months for 1952, 1953 and 1954:

(1) Statistical Summary, Bank of Canada, November, 1954, p. 232.

Table 15. - Indexes of Value of Shipments (December, 1952 = 100)

Electrical Apparatus
(Consumer Durable Goods)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1952	53.7	65.2	72.2	76.9	89.7	97.6	86.9	88.1	104.4	121.8	109.2	100.0
1953	87.1	115.6	127.6	131.9	122.6	126.8	94.3	94.2	137.5	141.8	143.8	151.3
1954	99.4	112.0	153.2	130.3	122.4	117.0	98.4	118.0	146.3	141.1	167.1	156.3

Sub-Group
Refrigerators, Vacuum Cleaners and Appliances

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1952	63.0	80.1	102.7	111.9	140.1	153.7	157.7	135.6	131.3	132.9	118.1	100.0
1953	115.6	149.7	172.0	186.0	192.1	212.0	177.9	115.7	165.8	124.9	125.7	134.8
1954	112.6	126.5	207.8	183.8	193.9	202.7	139.6	118.6	161.4	113.0	135.2	135.4

In the case of only one metropolitan area, Vancouver, is information available as to the sales of appliances to consumers in 1954, compared with 1953. The B. C. Electric Company publishes a monthly bulletin which gives figures of sales reported by dealers in the lower mainland area of British Columbia. The bulletin of February, 1955, gives the following comparative figures for value of sales in 1953 and 1954:

	1953	1954
Major electrical appliances	$14,869,638	$12,218,399
Traffic appliances	538,937	786,412
Radios and TV	3,452,649	12,637,845

While the dollar value of sales of major appliances declined in 1954, there was a tremendous increase in the sales of television sets. It may also be noted that sales of traffic appliances, which were reported to be particularly subject to price-cutting in Vancouver, showed an increase of 46% in value in 1954 compared with 1953.

The same bulletin also gave comparative figures as to the number of units of certain appliances sold. These were shown as follows:

Table 16. - Number of Certain Electrical Appliances Sold in Lower Mainland Area, British Columbia, 1953 and 1954

	1953	1954
Ranges	6,554	7,696
Refrigerators	20,959	17,072
Home Freezers	3,640	811
*Auto. S. Wtr. Htrs.	3,109	4,389
Dishwashers	92	185
Washers	9,035	8,266
Auto. Washers	2,136	2,790
Clothes Dryers	610	1,232
Ironers	284	221
* TV	4,788	35,657
Radios	11,393	11,692
Elec. Blankets	138	650
Polishers	5,886	6,737
Cleaners	5,796	7,233
Fires	143	277
Rangettes	579	947

* Note: The Bulletin reported that the following revisions should be made in the cumulative monthly figures for 1954:

Television Sets	49,000
Automatic Storage Water Heaters	10,525

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Among what may be regarded as newer products included in the above table are home freezers, dishwashers, automatic washers, clothes dryers, television sets and polishers. In view of the submissions which were made by some manufacturers and dealers that the absence of resale price maintenance tended to discourage the promotion and sale of such products, it is of interest to note that sales of such newer products, except home freezers, were larger in 1954 than in 1953. It may also be noted that some long-established products, such as radios and vacuum cleaners, also showed larger sales in 1954. It is not suggested that any conclusions can be drawn from such limited information other than that the general state of the market is reflected in the trend of sales. This seems to be a common point in a report presented in the Financial Post of March 5, 1955, on the state of retail trade across Canada. The following comments were made in the report:

> "More bargains for the consumer, more selling in the stores.
>
> Those were two of the big factors that lifted the retail trade off to a good start in the first two months of 1955.
>
> Provincial increases ranged from 3% to more than 20% over last year.
>
> . . .
>
> Ontario
>
> Ontario retailers have enjoyed a steady, if unspectacular, improvement in sales, with an average 3% or 4% increase.
>
> TV has held its place as top seller, without the slightest sign of slowing down. Otherwise business has been evenly distributed throughout various lines.
>
> . . .
>
> Quebec
>
> TV is a big seller with some price cutting.
>
> Household appliances generally are moving well. New

home construction has helped.

. . .

Manitoba

In appliances TV is in the lead. Sales continue very high. In other household appliances, sales are better than expected.

. . .

British Columbia

TV continues to be the largest seller with 1955 sales remaining at their continued high level which saw 78% of the 65,000 sets in use in B. C. sold last year.

Other leaders are automatic washers, polishers and cleaners while home freezers, ranges, refrigerators and radios are in a slump which began in 1954."

5. In Relation to Agricultural Producers

In contrast with the situation disclosed in the report of the Royal Commission on Price Spreads in 1935, in regard to the groups making representations about loss-leader selling, the Restrictive Trade Practices Commission did not receive any representations from primary producers alleging that the practice affected in a detrimental way the marketing of agricultural products. The Canadian Federation of Agriculture presented a brief to the Commission in which it was argued that the public would benefit from freedom of dealers to compete in price, and there was no suggestion that this would have any ill effects on the marketing of agricultural products. In part the contrast with the earlier inquiry rests on the fact that the representations made to the Royal Commission on Price Spreads in regard to loss-leader selling involved, in many cases, complaints about the sale of unmanufactured or non-branded articles, whereas in the present inquiry the representations have had reference, to a much greater extent, to branded manufactured goods. However, there were some representations which discussed the effect of selling practices at the retail level on the distribution of agricultural products and these are reviewed in this section.

The Retail Merchants' Association of Canada (Saskatchewan) Incorporated stated that in the sale of fruit in Western Canada, it was not uncommon for a retailer to cut the price

of a particular product below his laid-down cost, using it as a leader for a short period in mid-season. As a result, other retailers lost interest in promoting the sale of the fruit and consumers postponed buying when the price returned to normal, expecting again to have the opportunity of buying at the reduced price (p. 2385). When this opportunity did not recur, consumers found the season was over before they finally decided to buy, with the result that the producers were left with fruit they could not sell. This was said to have happened again and again. It was also argued that when one retailer made a sharp reduction in the price of fruit and some other retailers met the reduced price, all other retailers completely lost interest in the item, and again sales by the primary producer were prejudiced (p. 4198).

Some specific instances of price reductions in the price of fruit by a chain store were cited in the supplementary brief of the Retail Merchants' Association of Canada (Saskatchewan) Incorporated as examples of loss-leader selling, but the chain store in question denied the allegations and stated that in the instances cited the fruit was reduced in price for quick sale because its quality was deteriorating.

As to the general effect of price reductions in the sale of produce, it appears unlikely that any substantial proportion of consumers would postpone buying until the season had ended, as most housewives are well aware of the particular seasons for various fruits and vegetables. Also, as pointed out by the Canadian Association of Consumers, housewives are quite accustomed to the practice of articles being featured at reduced prices, especially in the food field.

If the reduction in the price of produce was only temporary it is not likely that it would have any persisting effect on the attitude of other retailers toward handling the articles. If the price reduction was prolonged, which would necessarily involve question as to the supply of the article and its popularity for purposes of being used as a leader, it is difficult to see that such action would work against an expanded market for the producers. The economic factors which would be expected to be operative in such a situation were described by Dean Grether as follows (pp. 3282-3284):

> "First, it is argued that the use of leaders and loss leaders has a depressing effect upon the prices of primary producers. I might say that this argument was used very effectively in the depression period and was, to some extent, the base of the whole NRA program in the United States. It was felt that one might be able to resolve some of this problem of depressed markets by arbitrarily raising prices, and by applying force to the markets.
>
> So far as leaders and loss leaders are concerned, it

seems to me this is an example of relatively naive and unsophisticated reasoning. If a loss leader is a true loss leader, then by definition the dealer is subsidizing the practice himself. In other words, he has voluntarily reduced his marketing rate below his normal marketing rate, or some other figure which he might have used otherwise. And he himself, therefore, for purposes of selling other products, has decided to take this particular reduction.

He therefore, in a sense is subsidizing the sale of his product. And the reduction in price, other things being equal, should increase the sale of the product, with given demand conditions existing in the market.

There is no particular reason, you see, why this should work back to the disadvantage of the primary producer. On the contrary it should benefit the primary producer, because it will tend to increase the sale of his product.

There is one exception. The exception would be in those markets where a large number of dealers, in retaliation, could boycott the sale of this particular product. And, if that happened, you would have a problem, again, of collective action. But assuming individual and spontaneous action or forces, it seems to me one cannot make a case for the proposition that loss leader practice would work backwards through marketing channels to the detriment of the primary producers.

On the contrary you may recall that some of our large distributors have been praised tremendously for trying to bring a solution of the problem of excess farm products by featuring them in their stores. It might be very difficult to dissociate this type of praiseworthy practice from the use of something called loss leaders."

The point last mentioned in this connection by Dean Grether was also discussed in the brief submitted by Canada Safeway Limited. That Company stated that on many occasions grocery retailers were approached by farmers and organizations speaking for farmers with a request for assistance in disposing of certain particular farm products which were in heavy surplus. On these occasions the Company's representative stated that it was customary for grocery retailers to co-operate with the producers by arranging special advertising displays and sales promotion and often to reduce customary retail margins. One case mentioned by the Company as an example coming within its own experience had to do with onions. It seems that in the spring of 1954 the Division Manager for the Safeway Company in Vancouver was approached by the B. C. Tree Fruits Board, and help was asked in moving a surplus quantity of onions still in storage from the 1953 crop year, which, if not soon

disposed of, would result in the farmers taking a big loss. The Company immediately arranged for special advertising and general promotion of onions through their stores in British Columbia and Alberta. The retail margin usually taken by the Company was reduced, and in the result relief was afforded to the distress situation in respect of onions.

The Company particularly pointed to the need in such circumstances for freedom on the part of grocery retailers to adjust prices. Their brief stated (p. 2885):

> "We want to emphasize that an essential ingredient to the success of many of these special farmer-consumer surplus promotions is the freedom of the retailer to reduce his customary markup."

The representative of the Canadian Federation of Agriculture, when asked to express his views on the possibility that the sale of an agricultural product on a low markup by one retailer, thus causing other retailers to lower their prices on the same article, would have a tendency to depress the price paid to the primary producer, commented as follows (p. 3964):

> "MR. HOPE: . . . I never have heard any body of farmers make that argument. That is the first thing.
>
> Then, secondly, my feeling is that there is a counteracting force on what you gentlemen say there. Because if you are going to drop the price of a product like cheese, and make it more acceptable to the consumer, then you are going to increase the demand for that product. And if you increase the demand for the product, then I believe that offsets any suggestion -- well, they would sell more cheese, in other words, the group of them -- not just the one who did it, but probably everybody would."

CHAPTER V

MISLEADING AND BAIT ADVERTISING

Some types of advertising employed in certain lines of trade, particularly in connection with retail sales of radios, television sets and electrical appliances generally, were frequently characterized in representations made to the Commission by such terms as "fraudulent", "misleading", "unethical" or "confusing". In the opinion of some of those who applied such terms to some types of advertising in current use at the time of the hearings, the elimination of what were regarded as abuses of advertising would remove the main source of the difficulties besetting the retail appliance trade. There were others, however, who regarded objectionable forms of advertising as symptoms rather than causes, and still others who felt that instances of advertising which could be considered censurable because of its false or misleading character occurred rather infrequently.

While the types of advertising claims against which objections were expressed appeared to range from minor forms of exaggeration to instances which, if made on the basis described, were of a fraudulent nature, criticisms, in the main, were directed against the following types:

(a) Advertising of articles at very low prices when the advertiser does not intend to sell the articles so advertised. This class includes what is referred to in the trade as a "nailed down" product. The advertiser may have one or two of the articles on display in his store, but when a prospective customer attempts to make a purchase he is told that the article on display has already been sold, or every effort is made by the salesman to substitute some other article in a sale to the customer. It was alleged by some trade representatives that salesmen in some stores engaging in this practice are penalized by a five dollar fine if they permit a customer to buy a "nailed down" article. Another description of this practice is "bait advertising", by which is meant that the prospective customer is led to the merchant by an advertisement featuring a very low price for an article and then every effort is made to persuade him to buy a higher-priced article. The following distinction between "bait" and "bargain" advertising is contained in a pamphlet prepared by a Better Business Bureau in the United States to give information to consumers:

> "Bait ads hurt everyone. They bring business to the advertiser willing to stoop to trickery. If a little trick

earns him more money, he is encouraged to try a bigger one. And you get hurt in the nerve that leads to your pocketbook. Some reputable businesses may soon feel they must try trick ads, too, to meet the baitvertiser's competition, and bad practices grow like a cancer in the community.

Most newspapers and radio stations refuse bait ads but they are hard to spot. For example, the best of firms regularly run 'price leader' ads which are real and honest bargains to bring you into their stores, where you are likely to buy other items at regular cost.

Or any good salesman may tell you that a higher-priced product than the one advertised will give better service and cost less in the long run.

The difference between ethical salesmanship of this type and the activities of the baitvertiser is that he deliberately tries NOT to sell you the product he advertises."

(b) Advertising in which a selling price is compared with a former price which is no longer relevant. In many advertisements the price at which the article is offered is compared with some higher price which may be described as "regular", "list", "formerly", or some other wording which suggests that the purchaser will secure an actual reduction in price in making the purchase. This may be the case, but in some instances the higher price may have applied when the model was first introduced and has ceased to be the prevailing price, or the comparative price may have been affected by a change in taxes or in some other way and ceased to have any relevance as a current market price. In these and similar circumstances the price at which the article is offered may be no lower than the going price, or much less reduced in price than the comparison would lead an uninformed consumer to believe. While in some cases there may be deliberate misrepresentation of the current retail list price of the manufacturer, in other cases the dealer may be advertising the correct list price of the manufacturer even though this has ceased to have any relevancy to the market. This is the case when the manufacturer, in an effort to dispose of models at the end of a season, or to stimulate the sale of a particular model, reduces his selling price to the trade or makes some other allowance to the dealer, without making any change in the suggested retail price of the model. It appears that in many cases the manufacturer expects that the dealer will pass on the reduction in price to the consumer in the form of a lower price, and that the retail list price is left unchanged so that the dealer can use the comparative price as a selling point in pushing the model. In some cases the manufacturer may consider that

the reduction in price made possible by his action would be less disturbing to the trade if made by way of an advertised trade-in allowance rather than a direct lowering of the sale price, but, as it would not be expected that the "trade-in" would have an actual value equal to the amount of the reduction from list price, it could hardly be said that advertising in this latter form in such circumstance would not contain some element of misrepresentation.

(c) The advertising of models of a previous season as current season models. This practice, from the viewpoint of some sections of the trade, is somewhat similar in effect to the preceding practice in that two widely different prices may be compared in an erroneous manner by the consumer. In this case the consumer may be misled to compare the price of an old model with that of a current model, without realizing that the two are not of the same period of production. A well-informed consumer would not likely be misled by such advertising because the products involved would be identifiable by model number and the current season's model could be readily ascertained. Nevertheless advertisements can be prepared in such a way as to make any distinguishing feature difficult to detect, or even to imply that the featured article is one of the latest models on the market. This is obviously a type of misleading advertising which is prejudicial to the interests of consumers as well as to those of manufacturers and dealers in general.

(d) The misrepresentation of the terms or conditions on which purchases may be made. It was represented that some advertisements by dealers for instalment sales contain such phrases as "no down payment", "make your own terms", and "no interest". The expressions were stated not to represent accurately the basis on which sales were made because, unless the customer traded in some article of substantial value, a down payment was required in most cases, and terms of finance were usually as high or higher than those charged by instalment finance companies. Misrepresentation of this kind is clearly a deceptive trade practice which is harmful both to consumers and to competitors. It is likely to be of a self-defeating character because consumers would become aware of the misleading character of the advertisements on seeking to make a purchase and, even if persuaded to accept the conditions the first time, would be disinclined to accept similar advertisements at face value on a subsequent occasion.

Varying opinions were expressed by those appearing before the Commission as to the practicability of attempting to control false and misleading advertising by legislation. It was felt by some that the only prospect of improvement lay in the acceptance of higher standards

of ethical advertising by the trade generally. Others thought that corrective action would be possible if manufacturers were again permitted to control resale prices, although it was admitted that excessive claims as to trade-in allowances had occurred prior to the ban on resale price maintenance. It was suggested by some that enforcement of Section 406 of the Criminal Code would have a salutary effect and that the section should be strengthened if it could not be enforced in its current form against fraudulent and misleading advertising. This section, in so far as it relates to false advertisements in general, reads as follows:

> "(2) Every person who publishes, or causes to be published, any advertisement for promoting either directly or indirectly the sale or disposal of any real or personal, movable or immovable property, or any interest therein, or promoting any business or commercial interests, which contains any statement purporting to be one of fact which is untrue, deceptive or misleading, or which advertisement is intentionally so worded or arranged as to be deceptive or misleading, shall be liable upon summary conviction to a fine not exceeding two hundred dollars or to six months' imprisonment, or to both fine and imprisonment: Provided that any person publishing any such advertisement accepted in good faith in the ordinary course of his business shall not be subject to the provisions of this subsection."

The latter proviso was interpreted by some trade groups as an exemption which applied to the advertiser, that is, the dealer placing the advertisement, and thus to make it difficult to prove that a particular type of advertisement was not used "in the ordinary course of his business". This seems obviously to be an erroneous interpretation of the provision, which clearly relates to the publisher of the publication containing the advertisement and not to the dealer who places the advertisement. That this is the proper interpretation is made even more clear by the wording of the subsection as it appears in the revised Criminal Code (effective April 1, 1955) as parts of Section 306, as follows:

> "306. (1) Every one who publishes or causes to be published an advertisement containing a statement that purports to be a statement of fact but that is untrue, deceptive or misleading or is intentionally so worded or arranged that it is deceptive or misleading, is guilty of an indictable offence and is liable to imprisonment for five years, if the advertisement is published
>
> (a) to promote, directly or indirectly, the sale or disposal of property or any interest therein, or
>
> (b) to promote a business or commercial interest.

(2) Every one who publishes or causes to be published in an advertisement a statement or guarantee of the performance, efficacy or length of life of anything that is not based upon an adequate and proper test of that thing, the proof of which lies upon the accused, is, if the advertisement is published to promote, directly or indirectly, the sale or disposal of that thing, guilty of an offence punishable on summary conviction.

(3) Subsections (1) and (2) do not apply to a person who publishes an advertisement that he accepts in good faith for publication in the ordinary course of his business."

The provisions of the Criminal Code in the earlier or revised form seem adequate to embrace advertising which is deliberately false or misleading. The members of some dealer delegations expressed the view that one retailer could not be expected to take action against another, and that a trade association would be in an embarrassing position if it endeavoured to see that prosecution was undertaken for breach of the Criminal Code. At the same time it may be noted that dealers are prosecuted for other types of illegal competitive practices, for example, prosecution for draws which are contrary to the lottery provisions of the Criminal Code. It is difficult to avoid the conclusion that, if advertising of a definitely illegal character is being engaged in on an extensive scale and is producing the detrimental effects on competitors which have been suggested, there would be greater indication of efforts among trade groups to seek the enforcement of the provisions of the Criminal Code.

On the part of manufacturers of electrical goods, it was represented that an individual manufacturer is largely helpless to prevent false and misleading advertising being engaged in by one of his dealers, in the absence of power to cut off supplies because of price-cutting. While it may be the case that a dealer who engages in false and misleading advertising may also sell goods of the manufacturer at less than the suggested resale price, this does not preclude the manufacturer from endeavouring to see that his products are promoted for sale in ways which are not misleading to the public. It appears to be the case that a great deal of dealer advertising of electrical goods, including radios and television sets, is published on what is known as a co-operative advertising basis. That is to say, within certain monetary limits and subject to certain conditions, the manufacturer will share a portion of the costs of a dealer's advertisement of the manufacturer's products. In some cases the proportion is 50% of the cost of the advertisement or that portion of it which features the manufacturer's products. In the case of one manufacturer, whose co-operative advertising policy was examined by the Commission in another connection, it was found that it was a stated condition that any advertising which, in the manufacturer's opinion, was misleading would not be eligible for credit. Inasmuch as ill effects from false and misleading

advertising are likely to be in direct proportion to the extent of the advertising, the contribution of manufacturers is a matter of considerable significance which would not be lightly endangered, if the dealer knew that deceptive practice on his part would render him ineligible for credit. While the following comment made during the hearings by a member of the delegation from the Canadian Electrical Manufacturers Association does not bear directly on the matter of co-operative advertising, it does suggest that a good deal of the complaint from dealers about advertising relates to the question of price rather than to misrepresentation (p. 961):

> "We think it would be most difficult to prove that you terminated a dealer's franchise for other than price consideration. Price is an important thing in all these matters. Most dealers advertising at reduced prices are careful not to misrepresent the product. They also give pretty good service in the large metropolitan areas. But, their prices are preventing the small dealers in small communities giving the services they should be offering to the people of those communities because of the prices advertised in the Toronto papers."

A member of the delegation representing the Canadian Retail Hardware Association stated that, while instances of "nailed down" products had occurred, he did not make any such suggestion with respect to one of the large-scale appliance outlets in Toronto whose store was near one of his own.

The operator of this large-scale business informed the Commission during his appearance that he did not sell merchandise below cost, and a large dealer in Vancouver, whose advertising had been drawn to the attention of the Commission, stated that he followed the same policy. He informed the Commission that, when an article is featured in an advertisement, his company has a stock on hand, and that the price advertised does not remain in effect for one day only, but is continued until changed as a result of market conditions.

Organizations have been formed by business men to assist in raising the standards of advertising. The Commission was given a description of the work of the Ottawa branch of the Canadian Association of Better Business Bureaux Inc. by its secretary-manager. Among the purposes of the organization, as laid down in its constitution, are the following (p. 3852):

> "To encourage the formation of, to assist in the development of, to render service to better business bureaux engaged in fostering truth in advertising, and opposing fraud and deception and/or unethical practices in the advertising, offering and selling of merchandise, security, services, employment, or anything of value to the public;"

The Canadian Association forms part of the international Association of Better Business Bureaux. There are seven bureaux now operating in Canada and an eighth is in process of formation in Calgary. The existing bureaux are located in Halifax, Quebec City, Montreal, Ottawa, Toronto, Winnipeg and Vancouver. The local bureau serves the province in which it is situated, and if there is more than one bureau in a province the territory is divided between them. The Halifax Bureau serves the Maritime Provinces.

In the main, the Better Business Bureaux rely on persuasion and education to eliminate unethical advertising. Complaints of improper practices are investigated and efforts made to secure correction where this appears necessary. The bureaux furnish information to the public by the issuance of pamphlets and other means warning consumers of practices which may prove costly to them, and giving advice as to the best course to follow to avoid being taken in by spurious advertising or by false or misleading claims of salesmen. It was the opinion of the secretary-manager of the Ottawa Bureau that the methods followed are largely effective, and that instances of false advertising are relatively infrequent. As far as the secretary-manager was aware, Better Business Bureaux in Canada have not attempted to deal with cases of alleged false and misleading advertising by seeking the enforcement of Section 406 of the Criminal Code, but the bureau will attempt to assist any person victimized by such practices who seeks legal redress, by giving any evidence it can provide.

The matter of false and misleading advertising, in so far as it relates to this inquiry, must be considered from the viewpoint of the part it may play in the practice of loss-leader selling. While it may be argued that all forms of bait advertising assist in the practice of loss-leader selling in that such advertising holds out to the public the apparent opportunity of securing an article at a price much less than the value the advertiser would like the consumer to believe it possesses, such practices cannot be regarded as a substantial factor in merchandising unless they affect a significant proportion of the trade or are likely to do so. The evidence which has been obtained by the Commission leads to the conclusion that advertising which could be regarded as fraudulent plays a minor part in the distribution of those goods in regard to which representations have been made most frequently during this inquiry. It is the case that there is a great deal of advertising of comparative prices in the sale of electrical goods. Some of this may lead members of the public to make erroneous valuations of the prices at which an article may actually be offered by different dealers, although it is possible for the prospective purchaser, with a little care, to avoid being led astray in the case of branded goods. There are indications that the advertising of comparative prices is, in some cases, assisted by the manner in which manufacturers may change prices to dealers without altering suggested retail list prices and, in other cases, may actually be encouraged by the manufacturer to the end that the

dealer will appear to be offering a tremendous bargain in the sale of a particular model. That the public is deceived and misled by some advertising is all too apparent, and that business and consumers would benefit by greater truth in advertising is equally true. However, to a much greater extent than was represented to the Commission, means of improving the situation would appear to be available to manufacturers and dealers. It was suggested by the secretary-manager of the Better Business Bureau of Ottawa and Hull Incorporated that the desirable course would be for private business to seek through its own efforts to raise the standards of advertising.

CHAPTER VI

PREMIUMS, COUPONS AND "FREE" GOODS

Some forms of promotional activity by retailers and manufacturers which involved the use of premiums or coupons or "free" goods in combination sales were represented in the briefs of a few organizations as being in the nature of loss-leader selling, or as having similar effects. The Canadian Wholesale Hardware Association made particular reference to the use of hardware items and electrical appliances as premiums, by retailers not normally engaged in selling such products, and by manufacturers of other lines of goods, such as manufacturers of food products or of soap or detergents. In the opinion of the Association such premium offers had substantial effects in diverting the sale of the goods used as premiums away from the hardware trade, and in creating in the mind of the public a lack of confidence in hardware dealers, because the latter, in the normal course of trade, had to set the price of such goods at considerably higher levels than those at which they could be obtained as premiums. The Retail Merchants' Association of Canada, British Columbia, expressed somewhat similar views in regard to the use of premiums, when the goods selected do not normally form a part of the business of the premium sponsor. The examples of the giving away of bread referred to in the brief of The National Council of the Baking Industry and discussed elsewhere in this report are a variant of the premium type of promotion.

In general, it may be said that the offering of premiums is a form of advertising which is designed to increase the sale of a particular product or to increase the business of a particular retail store or group of stores either generally or for certain shopping periods. An example of the use of premiums for the latter purpose is the offer of a piece of china or kitchenware with the purchase of a grocery order of a minimum value during the first three days of the week. The conditions of the premium offer are designed to spread business more evenly over the weekly shopping days and thus permit more business to be done with the same staff and facilities.

The Allied Beauty Equipment Manufacturers' & Jobbers' Association referred in its brief to "free" goods, which were described as the offer of a larger quantity of goods at the price which usually applied to a smaller quantity. The effect, of course, is the same as that of an outright price reduction, and the offer may be made either to introduce a new product or to stimulate the sale of one which has been on the market for some time. Somewhat similar in effect were some of the coupon offers described by the representative of the Retail Merchants' Association of Canada (Saskatchewan) Incorporated. In some cases a retailer may issue coupons which entitle the customer to a

reduction in the total price of an order of goods exceeding some minimum value. In other cases, either the retailer or manufacturer may issue coupons which entitle the customer to a reduction in the price of a particular article. The use of coupons in this way is not confined to retailers of a particular size and it probably would not be difficult to find examples of the use of coupons by local merchants in all parts of Canada. This is borne out by the following comments made by Mr. A. A. Shelly, spokesman for the Retail Merchants' Association of Canada (Saskatchewan) Incorporated (p. 4234):

> "The question of premiums, I think is a debatable one. But in principle I would say there is nothing deceptive about premiums. It is open to anybody and everybody, in practice. And so therefore, in principle, we have no objection to them. They can, of course, become a great nuisance to the consumers. . . .
>
> The consumer -- that is, the thinking consumer -- actually does not welcome that sort of thing, because he has the feeling that these premiums have to be paid for sometime or somehow. I would not say that is necessarily so, because if they have the effect of producing extra volume and thereby reducing the cost of doing business, they need not necessarily have any effect upon the price."

The incidental references which were made to premiums and coupons during the course of the hearings do not provide any real indication of the amount of trade affected by their use, or the results which their use produces as distinct from other forms of advertising or promotion. The Director of Investigation and Research did not include a study of the use of premiums and coupons in the surveys which he made because, in his opinion, "these practices extend beyond and in many respects differ from 'loss-leader' selling." The regulation of the use of premiums and coupons would involve very direct interference with the ordinary conduct of private business and could only be justified if the practices were monopolistic or had a significantly repressive effect upon competition. From the information put before the Commission we are inclined to believe that the use of premiums and coupons constitutes a form of advertising or promotional activity whose excessive use should be held in check by competitive forces, such as the responsiveness of consumers, the attitude of retailers and the actions of competing firms.

CHAPTER VII

REPRESENTATIONS AS TO CHAIN STORE DISTRIBUTION OF CERTAIN PRODUCTS

1. Relative Positions of Independent, Chain and Department Stores

In general, it may be said that submissions made to the Commission alleging detrimental effects caused by loss-leader selling were only in a few cases directed against large-scale distributive organizations, such as department and chain stores. In two lines of trade, the distribution of bread and the distribution of cigarettes, the selling prices of chain stores were represented to be the dominant factor in the practice of what was regarded by some trade groups as loss-leader selling, and it appears desirable to examine with some particularity the evidence before the Commission relating to these two lines of trade. Before doing so, it is of interest to compare the general tone of the submissions made in the present inquiry with that indicated a score of years earlier in the proceedings of the Special Committee on Price Spreads and Mass Buying. In the proceedings in 1934, there were representations on a wide scale on the part of organized retail merchants of the detrimental effects of alleged loss-leader and other practices of department and chain stores. One representative of a retail merchants' association expressed the opinion that "the dominating influence exercised by the department store and its subsidiaries as well as the chain store and its units is a social menace." Another representative stated: "The independent retail merchant to-day realizes that policies and forces are at work throughout Canada which, if allowed to continue, mean his ultimate elimination as a distributor of merchandise to the consumer." There is no question of the serious position in which independent retail merchants, along with other business men, found themselves during the decline in economic activity in the early nineteen thirties, and it is possible that their positions were aggravated by certain practices in retail trade which received greater emphasis in that period. The basic factors in the situation, however, were the general depressed conditions with consequent lack of consumer purchasing power, and the changing system of merchandising in important fields with emphasis on self-service and rapid turnover. In the years which have intervened since the depression there have been further changes in merchandising, but the independent merchant has not been eliminated. In large measure he has adapted himself to the changed conditions and shown a degree of initiative and enterprise which bodes well that he will continue to play an essential role in the distribution of goods to the consumer.

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Confidence in the continued ability of the intelligent independent merchant to maintain his competitive position is indicated in the following comment of the general manager of The Retail Merchants' Association of Canada, British Columbia (p. 2743):

> ". . . Intelligent retailers, the independent ones, will still be in business in Canada, no matter what happens. They will be here, just as long as the chain stores and the department stores and everybody else are here, and they will be doing a brisk competitive business with them -- and in many cases they will be leading the way into new fields.
>
> But I do say they will be driven most certainly out of some lines and driven to do other things, by various aspects of government legislation."

Shifts in the relative positions of independent, department and chain stores are indicated in the figures for retail trade in Canada from one census to another. In some fields, such as food merchandising, the latest census figures, for the year 1951, show that chain stores have increased their share of the business, but not at the rapid rate which had been forecast in some quarters when chain food stores began to occupy a significant position in the food field. In other lines, such as drugs and drug sundries, and women's clothing, the census figures for 1951 show that the proportion of chain store business has remained comparatively stable or has declined relatively. It is of some interest to note that for 11 commodity classes, which can be compared in the 1941 and 1951 censuses, the proportion of sales made by department stores declined for 5 classes, remained practically the same for 4 classes and showed an increase for only 2 classes. The decreases in percentages of total trade ranged from 1.2% in the case of the sale of meals and lunches to 5.1% in the case of furniture and the increases were 2.0% in the case of radios, record players and equipment and 2.3% in the case of drugs and drug sundries. In the case of chain stores, increases in proportion of sales were shown for 5 classes and decreases also for 5 classes, with one class showing relatively little change. The increases in total percentages ranged from 1.2% in the case of men's and boys' clothing and furnishings to 5.5% in the case of food and kindred products. The decreases ranged from 0.9% in the case of radios, record players and equipment to 7.6% in the case of the sales of meals and lunches and 6.2% in the case of drugs and drug sundries. The change in the proportions for independent merchants were largely the reverse of the foregoing for the respective commodity groups. There were increases for 5 classes and decreases for 5, with one group remaining relatively unchanged. The increases ranged from 1.9% for furniture to 8.8% for the sale of meals and lunches. Decreases ranged from 1.1% in the case of men's and boys' clothing and furnishings to 4.9% in the case of food and kindred products.

The proportions of department, chain and independent store business in the various commodity classes are shown in the following table for the census years 1941 and 1951:

Table 17. - Percentages of Estimated Total Sales of Specific Groups of Commodities for Department, Chain and Independent Stores 1941 and 1951

Commodity Group	Department Stores %		Chain Stores %		Independent Stores %	
	1941	1951	1941	1951	1941	1951
Food and kindred products	4.0	3.4	20.3	25.8[1]	75.7	70.8[1]
Men's and boys' clothing and furnishings	26.4	26.3	11.1	12.3	62.5	61.4
Women's, misses' and children's apparel and accessories	34.8	33.0	15.7	13.4	49.5	53.6
Dry goods and notions	47.0	45.8	16.3	19.0	36.7	35.2
Shoes and other footwear	28.7	28.5	19.5	23.8	51.8	47.7
Drugs and drug sundries	6.7	9.0	18.0	11.8	75.3	79.2
Electrical appliances and supplies	19.4	19.3	20.7	20.2	59.9	60.5
Radios, record players and equipment	22.7	24.7	9.9	9.0	67.4	66.3
Furniture	33.8	28.7	13.2	16.4	53.0	54.9
Jewellery, silverware, clocks and watches	16.8	16.5	29.6	25.0	53.6	58.5
Receipts from the sale of meals and lunches	4.3	3.1	15.3	7.7	80.4	89.2

(1) Revised figures furnished by Dominion Bureau of Statistics.

The foregoing table shows the positions of department, chain and independent stores with respect to the sale of specified classes of commodities. The following table shows the relative positions on the basis of the total business of stores of all kinds for the census years 1930, 1941 and 1951:

Table 18. - Sales of Department, Chain and Independent Stores as Percentages of Total Sales of All Retail Stores 1930, 1941 and 1951

Year	Total Sales All Stores 000 $	Percent of Total Sales Department and Mail Order Houses	Chains	Independent Stores
1930	2,740,105	13.0	18.3	68.7
1941	3,440,902	11.0	18.7	70.3
1951	10,652,780	8.5	16.7	74.8

2. Bread

(a) Allegations of Loss-Leader Selling

The bread-baking industry was represented before the Commission by a delegation of The National Council of The Baking Industry, whose membership embraces bakeries in all parts of Canada, the sales of which were stated to constitute not less than 80% of the commercially baked bread and other bakery products in Canada. The allegations as to loss-leader selling in the bread-baking industry were confined to the sale of what was termed the "standard" loaf of bread, and more particularly to the sale of standard bread by chain stores in the provinces of Ontario and Quebec. The designation "standard" in the brief of The National Council of The Baking Industry was represented to mean, not bread made with any particular formula, but the most common size of loaf, by weight, distributed in different markets. In the case of Ontario and Quebec, standard bread was taken as the 24-ounce loaf, but in some other provinces loaves of other weights would be "standard" under such a designation.

The situation with respect to the sale of bread by chain stores, as the delegation properly pointed out, is not a matter of recent development, at least with respect to the sale of bread at two price levels, one price for bread sold under private brand and a higher price for bread sold under the baker's brand. In some cases, only one being cited for Ontario and Quebec, the bread sold under private label is made in the chain store's own bakeries, but in other cases the bread is made for the chain store by an outside bakery. The relative retail prices in Ontario and Quebec for chain store and bakers' bread, given in the brief of The National Council of The Baking Industry, were 15¢

for the chain store private brand loaf and 19¢ for bakers' bread, a difference of 4¢ per loaf. The price of 19¢ was represented to be the prevailing price charged for bread sold on house-to-house delivery, and it also appeared to be the prevailing price for bakers' bread sold in retail stores, whether chain or independent. While there may be some exceptions, it is generally the case that chain stores handle bakers' bread in addition to their own private brand. No comprehensive information was submitted as to the relative proportions of sales of bakers' bread to total sales of bread in chain food stores, but figures secured by the Director of Investigation and Research covering sales by three(1) chains in Montreal in January and February, 1954, show that sales of bakers' brand bread made up about 27% in quantity of the total sales of bread by the three chains during that period.

It was represented that the difference in price between chain store bread and bakers' brand bread, which has existed for a great many years, has been responsible, in some part, for the decline in the number of bakery establishments and the tendency for production to be concentrated in large-scale undertakings. No actual evidence was advanced to support this contention and it was admitted that long-run developments in the baking industry were the result of many causes. While a price differential of 4¢ per loaf between certain brands exists in markets in Ontario and Quebec where chain stores operate, other breads are sold in different sized loaves and at other prices. In some markets in other provinces the difference in price between chain store and bakers' brand bread is only 1¢ per loaf and the Commission was informed that in the Maritime Provinces there is generally no difference in price. A representative of the baking industry from the Maritime Provinces stated that the operating results of bakeries in that region were no more favourable than in Ontario and Quebec. It appears, therefore, that the decline in number of bakeries in the various provinces does not show any direct relationship to the existence or extent of a price differential between chain store and bakers' brand bread.

It was not suggested by the baking industry that the price of bread in chain stores should not be lower than for other types of distribution, but it was contended that the difference of 4¢ between chain store and bakers' brand bread in Ontario and Quebec "is greater than can be established on any proper basis of cost considerations." It was admitted that this question had been examined in previous inquiries and that on those earlier occasions the information furnished by chain stores making their own bread did not show that a loss was being incurred in supplying such bread. No new evidence as to manufacturing costs of bread was put before the Commission, nor was any evidence submitted by the baking industry as to the prices at which private brand bread was being supplied to chain stores. Information secured by the Director of

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(1) Four chains were included but one did not furnish information as to sales of bakers' bread.

Investigation and Research from four chains in Montreal showed that two chains purchasing bread from outside bakeries and taking delivery at central warehouses had margins on selling prices of private brand bread of 18.33% and 15%. A third bakery, making its own bread, had a margin over warehouse cost of 15.33% on selling price. The margin for the fourth chain which had private brand bread delivered to each unit was 8.33% on selling price. It is evident that no conclusion as to selling below cost could be drawn from these figures.

In a written submission to the Commission made by The National Council of The Baking Industry after the public hearings had been concluded, the representation made with respect to the price differential of 4¢ between chain store bread and bakers' brand bread was qualified in the following manner:

> "If this situation does not involve actual loss leader selling (and we do not know with certainty whether it does or does not), then those affected adversely should be expected to find their own solution in the ordinary course of business."

The Commission regards this as a more realistic approach to the situation, and we commend The National Council of The Baking Industry for its action in advising the Commission of its reappraisal.

In the original brief and in the later submission The National Council of The Baking Industry made representations in regard to other practices which it considers affect the distribution of bread detrimentally. The brief described these practices as follows (p. 137):

> "Firstly, it has become a fairly common practice to give away up to thousands of loaves of bread on the occasion of the opening of new 'super markets', and on other occasions, with others who compete in the same area usually following suit.
>
> Secondly, there has developed a condition of sporadic selling of bread at further substantial price reductions. These outbursts also are invariably joined in by competitors in the areas in question.
>
> The prime objective upon the opening of a new 'super market' is, of course, to achieve the maximum customer traffic as quickly as possible. Opening promotions usually include 'give away' attractions that frequently run the gamut of the durable goods field. Often there are included in these 'give aways' food items which also often are in the form of giving away bread up to many thousands of loaves."

In regard to the first practice it is obvious that the opening of any new outlet in a market will have some effect on the distribution

of trade and that the larger the new outlet the more substantial is likely to be the effect. Whether the trade locally is expanding or contracting in the particular lines handled will, of course, have a bearing on the longer run effect. It may be accepted as, indeed, it was readily accepted by the representatives of the baking industry, that the opening of a new supermarket by a chain in any particular area will have some effect on the distribution of bread among householders patronizing the new outlet. It was contended, however, that the giving away of bread for a limited period created a greater effect in the long run than would be the case if such a practice had not been engaged in. No evidence was advanced in support of this contention other than evidence as to the decline in the number of loaves handled by bread delivery men of a local baker, following the opening of a new chain store in the district. These figures, as would be expected, showed a greater loss during the period when bread was being given away than during the subsequent period when the bread was put on sale by the chain store.

The operator of a chain store is interested presumably in building up the over-all business of a new unit and the sale of bread is only one of many products to which attention is given. It is difficult to see that the continued sale of bread at a particular store becomes greater because this product is given away for a limited period, or that, if a large-scale merchandising organization is interested in increasing its volume of bread sales and makes no use of free gifts, it cannot accomplish its objective by other forms of advertising with the same result. It seems logical to conclude that the sale of bread at chain stores goes along with the general patronage, and that in the long run, the distribution of bread is not affected significantly by limited "give away" promotions at isolated stores, as distinct from those effects which would result in any case from the operation of a large-scale merchandising outlet.

Several instances of sporadic price-cutting at points in Ontario and Quebec were described in some detail in the submissions made by The National Council of The Baking Industry as typical examples of the practice which was causing concern to the industry. In one case the information was supplemented by additional material presented to the Commission by the Director of Investigation and Research. This instance occurred in Montreal in January, 1954. On Monday, January 25, 1954, Montreal daily newspapers carried advertisements by a chain store offering its private brand bread for "this week only" at a reduction of 5¢ per loaf. One competing chain met this reduced price the same day, another chain, the following day and the fourth major chain operating in the Montreal area met the price on January 28. Independent stores, in a good many cases, also reduced their prices of bread and the situation persisted until the end of the week when the sale was concluded by the first chain. Prices of bread in chain stores were restored to the level existing prior to the sale the following week. The following table brings together in summary form the statistics secured by the Director for sales of private brand bread and bakers' bread, and

for total sales of all merchandise for the four chain stores included in the survey and, separately, for chain store "A", the chain store that initiated the price reduction and advertised it most extensively.

Table 19. - Sales of Bread and Total Sales by Four Chain Stores, Montreal, January - February, 1954

	Average per week for two weeks preceding price reduction	Sales during period of reduced bread price Jan. 25-30	Average per week for two weeks following period of price reduction
	(loaves)	(loaves)	(loaves)
Sales of private brand bread			
(1) Four chains -	120,700	225,215	132,000
(2) Chain store "A" -	67,830	149,490	71,450
Sales of bakers' brand bread			
(1) Four chains -	39,300	26,000	38,300
(2) Chain store "A" -	26,800	14,700	26,700
Total sales of all merchandise	(dollars)	(dollars)	(dollars)
(1) Four chains -	2,830,500	2,943,000	2,856,900
(2) Chain store "A" -	1,640,500	1,706,900	1,644,900

If the figures for the average of the two weeks preceding the price reduction and the figures for the week of the price reduction (January 25-30) are compared the following changes will be noted:

(1) An increase in sales of private brand bread of approximately 104,500 loaves, of which chain store "A" accounted for roughly 80%. During the week of the sale, chain store "A" more than doubled its sales of private brand bread while other chains increased their sale of private brand bread about 40%.

(2) A decrease in sales of bakers' brand bread of approximately 13,300 loaves, of which chain store "A" accounted for approximately 90%.

(3) An increase in total sales of approximately $112,500, of which chain store "A" accounted for approximately 60%.

Chain store "A's" share of the trade of the four chains taken together, in the two weeks preceding the price reduction was about 58%. Hence, despite gaining a very large proportion of the increase in sales of bread, its proportion of the total sales of the four chains in the week of the sale increased very slightly. One of the chain stores, in reporting to the Director, pointed out that the week of January 25-30 was a "pay-day" week, when some increase in sales could be anticipated. In fact, the increase in total sales during the period January 25-30, 1954, compared with sales in the two preceding weeks, appears to follow much the same pattern as the increase in sales during the period January 26-31, 1953, as compared with sales in the two preceding weeks. Hence, it is not clear whether the increase in sales of chain stores in the period January 25-30, 1954, was affected by the reduction in the price of bread during the period.

A comparison of average weekly sales for the two weeks preceding the week of January 25-30, 1954, and average weekly sales for the two weeks after the price reduction, shows the following changes:

(1) Average sales of private brand bread for the four chain stores in the two weeks following January 25-30 were approximately 11,000 loaves higher than the average for the two weeks preceding the price reduction. Of this increase, chain store "A" accounted for approximately 33-1/3%, whereas its share of total sales of private brand bread in the two weeks preceding January 25-30 had been about 56%. The sales of private brand bread by chain store "A" were about 5% higher than they were in the period preceding the sale while the sales of private brand bread by the other chains were about 15% greater.

(2) In the two weeks following January 25-30, average sales of bakers' brand bread which had declined during the period of the sale, rose to within 1,000 loaves of the average for the two weeks preceding the price reduction. Sales of bakers' brand bread by chain store "A" came back almost to the level in the period preceding the sale.

(3) Average total sales of all merchandise in the two weeks following the price reduction showed an increase of roughly $26,000, or less than 1%, over average sales in the two weeks preceding January 25-30. The sales of chain store "A" as a proportion of the total sales of the four chains declined for the latter period as it secured only about 17% of the increase while its proportion of total sales had been about 58% in the two-week period preceding the reduction in the price of bread.

In view of normal fluctuations in sales from one period to another, it does not appear that significance can be attached to the slight increase in total sales of the four chains in the period immediately following the

week in which the price of bread was reduced. In any event, the fact that chain store "A" had a very large increase in its sales of private brand bread during the week of reduced prices does not appear to have had any continuing effect in relation to the proportion of total sales which it secured in competition with other chains. Further, the information presented does not indicate any significant change in the total business of the four chain stores.

The food chain initiating the price reduction explained to the Director that the feature sale of its private brand bread was part of a general promotion of bakery products made exclusively for it by a manufacturer, and that as part of this promotional activity, the manufacturer had made an allowance of 5¢ per loaf which the chain had passed on to its customers. Other chain stores and merchants received no such allowance from their suppliers and had to absorb the 5¢ reduction in price themselves. In so far as the chain store initiating the price reduction was concerned, the sale of private brand bread at a very low price was a form of advertising, the cost of which was borne by the manufacturer, professedly in the hope of continuing increased business at a remunerative price in the future. There was no deception of the public in the advertising. The limited period of the sale was indicated, and the public would clearly expect to pay the normal price once the sale was over. In view of the special character of the relationship between the manufacturer of bread and the chain initiating the price reduction in this case, there may be some question as to the desirability from a social point of view of advertising in such a form. There is little doubt that an organization conducting business on a very large scale in any market possesses power to create serious disturbance, particularly for smaller businesses with limited resources. There is, therefore, a responsibility on the large organization not to use its power in an arbitrary manner, aside from any legal requirements which may be imposed upon it.

(b) Conclusions

Three types of situation in the distribution of bread were represented to the Commission by The National Council of The Baking Industry as involving loss-leader selling to some degree, and as producing long-run effects of a detrimental nature. The three types were described as the price differential between chain store bread and bakers' brands of bread, particularly in Ontario and Quebec, the use of bread as gifts in promotional campaigns on the opening of new stores, and sporadic price reductions leading to local price wars.

In regard to the first type of situation it was established that a differential in price between chain store bread and bakers' brand bread had existed in some markets for a great many years, and that the basis of cost had been examined in previous inquiries, and that it had not been established that any loss was involved in the sale of lower

priced bread. No new evidence relating to this aspect was submitted to the Commission and, as has already been mentioned, The National Council of The Baking Industry, in a later submission, qualified its earlier representations. The Commission has not considered it necessary, in a general inquiry into loss-leader selling, to make any detailed study of the bread-baking industry, but it has noted that the Royal Commission on Prices, which gave particular attention to this industry, concluded that "the influence of those chains which operate their own bakeries is the most significant factor remaining" in the determination of the price level in the industry. The Royal Commission on Prices also made the following comments on forms of competition in the industry:

> "The forms of competition which have developed among the large baking companies and merchandising organizations have had serious effects upon independent bakers who have not the resources to engage in the costly distribution methods of their larger rivals nor the volume of business which would enable them to compete with chain stores. The multiple baking companies distributing their products in many markets may engage in aggressive promotional activity to secure consumer patronage for their brands in a particular locality. The local baker with only that market to serve can not engage in the same tactics and hope to survive. In some cases, it appears, the only course open to him has been either to discontinue his business or sell out to the multiple company."

The two other types of situation in regard to which representations were made by The National Council of The Baking Industry appear, in the main, to involve some forms of advertising by the gift of bread or its sale at a low price for a limited period. It is argued that these forms of advertising, by reason of the nature of the commodity and the magnitude of the operations of some firms employing such advertising, create serious disturbances during the period of their employment and produce long-run effects. We are not convinced that, on the whole, advertising of these types alter significantly, either in time or nature, the trend of development in an industry or trade which is determined by more fundamental factors. The particular practices are not peculiar to the distribution of bread and are reviewed in their general aspects elsewhere in this report.

The National Council of The Baking Industry put forward certain proposals for remedial measures in its main brief and its later submission. These will be discussed in the section of the report dealing with the various proposals put before the Commission.

3. Cigarettes

(a) Allegations of Loss-Leader Selling

Delegations from the following associations and companies appeared before the Commission to make representations in regard to recent developments in the distribution of cigarettes: Retail Tobacco Association of the Province of Quebec, The Toronto Retail Tobacconists Association, L'Association des Distributeurs de Tabac en Gros de la Province de Québec, L'Association des Marchands de Tabac en Gros de l'Est de la Province de Québec, Benson & Hedges (Canada) Limited and Genin Trudeau & Cie Limitée of Montreal. Submissions in regard to conditions affecting the sale of cigarettes were also included in the representations made by some other organizations. In addition, the Commission received letters and other submissions made by companies or individuals in regard to the same matter, and also heard evidence from A. R. Tilley, Vice-President, Imperial Tobacco Company of Canada Limited. The Director of Investigation and Research had also collected material on the trade in cigarettes and on the situation existing in certain cities where price-cutting had been reported.

The allegations as to loss-leader selling centre about the sale of what are termed standard brand cigarettes which are manufactured by Imperial Tobacco Company of Canada Limited, and affiliated companies, W. C. Macdonald, Inc., and Rock City Tobacco Company, Ltd. The group of Imperial Tobacco companies occupies a dominant position in the tobacco field in Canada.

The sale of standard brand cigarettes, according to members of the trade, accounts for all but a very small percentage of the cigarettes sold in Canada, and approximately 77% of standard brand cigarettes are put up in packages of 20's.

Manufacturers of standard brand cigarettes, in general, made direct sales at two levels of prices. The lower price, which may be termed the wholesaler's or jobber's buying price, is the price charged to wholesalers or buyers accepted as wholesale purchasers. The higher price is charged certain retailers of tobacco products who have been accepted as direct buyers by the manufacturer, and are accorded what is termed the direct retailer's price. These direct accounts form a very small proportion of the total number of retailers of tobacco products.

Until November, 1952, the group of Imperial Tobacco companies did not accept any food chain as a wholesale buyer, but some food chains were given the direct retailer's price. According to the evidence of Mr. Tilley, Imperial Tobacco had been studying this situation since 1950, and in the summer of 1952 the Company reached a decision that, at a convenient time, it would grant its wholesale price

to certain food chains for delivery of tobacco products at a central warehouse. This decision had not been put into effect when some food chains began the importation of American cigarettes, which action, Mr. Tilley said, had the effect of leading Imperial Tobacco to expedite its announcement to six food chains that henceforth purchases for delivery at a central warehouse could be made at the more favourable wholesaler's price. Up to the time of Mr. Tilley's appearance before the Commission in September, 1954, no other food chains or group of food retailers had been granted the wholesaler's price. Mr. Tilley said that the six chains so recognized had been buying previously at the direct retailer's price, and that the action of Imperial Tobacco in extending the wholesaler's price to them was followed soon after by other tobacco manufacturers.

At the time hearings were held by the Commission the two levels of prices charged by Imperial Tobacco for standard cigarettes were as follows:

	Per 1,000	Equivalent Price Per Package of 20's
	$	¢
Wholesaler's Price	13.48	26.96
Direct Retailer's Price	14.00	28.00

Similar prices were in effect for standard brand cigarettes made by other manufacturers. The "regular" price charged by jobbers of cigarettes to retailers was $14.55 per 1,000 (29.10¢ per package of 20's), and the suggested retail price was 33¢ per package of 20's, apart from any provincial tax.

It may be mentioned that food chains operating central warehouses are normally granted full wholesale buying prices by manufacturers, and that the refusal of tobacco manufacturers until November, 1952, to grant the full wholesale price to food chains was a marked exception to the general situation. It may also be mentioned that groups of retailers operating a central warehouse are commonly recognized as wholesale buyers for goods delivered to such warehouses.

Following their acceptance as wholesale buyers by cigarette manufacturers, the six food chains had a lower cost price for cigarettes than had previously been the case. They had, of course, the burden of warehousing the products and making distribution to their individual retail stores.

It was not long before some chain stores having the advantage of a more favourable buying price began to reduce their price to consumers below the retail price suggested by the manufacturer. However, it does not appear that such reductions became particularly

widespread until the lowering of excise taxes on cigarettes in February 1953, and the further reduction in the manufacturer's price of standard brand cigarettes. Shortly thereafter the Director of Investigation and Research began to receive complaints from certain localities about reductions in prices of cigarettes by chain stores, leading to widespread reductions in prices among vendors of cigarettes or to loss of business by retailers not in a position to make such reductions. Complaints of retailers were supported by certain wholesalers or groups of wholesalers who foresaw a loss in their business if food chains increase their sales of cigarettes. Similar representations were made to the Commission.

By reference to the information already given as to manufacturer's selling prices for standard brands of cigarettes, the margins available to a food chain buying at the manufacturer's wholesale price and selling at specified retail prices can be readily determined. We may take for purposes of illustration the situation with respect to a large food chain operating in Vancouver which has been selling cigarettes at 31¢ per single package, 89¢ for 3 packages and $2.95 per carton of 10 packages. The relative margins at these prices are shown below:

	Unit of Sales		
	Single Package ¢	Three Packages ¢	Carton 10 packages ¢
Cost Per Package Delivered at Warehouse	26.96	26.96	26.96
Equivalent Retail Price	31.00	29.66-2/3	29.50
Percentage Margin on Selling Price	13.03%	9.13%	8.61%

In the case of Toronto, the Commission was informed during the hearings that one food chain was selling cigarettes at $2.99 per carton and some other chains were selling at $3.09. The margins at these prices on the basis already given would be 9.83% and 12.75% respectively. In the Province of Quebec there is a provincial cigarette tax of 10% of the retail price with fractions of a cent being computed as one cent, but, apart from this factor, the situation as described to the Commission was much the same as in the illustrations already given.

The margins available to an independent retailer, purchasing cigarettes at the direct retailer's price from the manufacturer or at the "regular" jobber's price from a wholesaler and attempting to sell at the same prices as the reduced chain store price, would be substantially reduced in comparison with the margins at the manufacturer's

suggested retail price of 33¢ per package. This may be seen by comparing the examples of selling prices just given with the prices to the trade mentioned earlier. The following table is illustrative:

	Cost per Package	Percentage Margins with Retail Selling Prices of:-			
		¢	¢	¢	¢
		33.00	31.00	29.66-2/3	29.50
	¢	%	%	%	%
Retailer Buying at "Direct Retailer's Price"	28.00	15.15	9.68	5.62	5.08
Retailer Buying at "Regular Jobber's Price"	29.10	11.82	6.13	1.91	1.36

For the purpose of establishing more clearly what changes in selling patterns were produced by reductions in the prices of standard brands of cigarettes below levels previously prevailing, the Director of Investigation and Research made surveys in 1953, of the sale of cigarettes in Winnipeg and Vancouver and also secured information from two chain stores and an individual retailer in Central Canada. Descriptions of the surveys and the detailed statistics obtained are given in the Green Book so that only the summary results are referred to here.

Winnipeg. On February 28, 1953, a large chain store advertised for one day a reduction in the price of cigarettes in its Winnipeg stores from 33¢ per package to 3 packages for 89¢ to meet a similar reduction made previously by an independent store in that city. Between March 3 and 16, cigarettes were advertised by the chain store for one or two days at a time at 2 packages for 59¢. On the latter date a regular price of 31¢ was established and subsequently cigarettes were advertised for two days at 3 packages for 89¢ which became the regular price on March 25. On March 30, the chain store established a regular price of 32¢ per package in its Winnipeg stores.

Representations were made to the Director that independent retailers were unable to meet the reduction in the price of cigarettes and were suffering serious declines both in their sales of cigarettes and in sales of other merchandise as well. In an effort to secure as complete statistical information as possible the Director sent a questionnaire to approximately 80 retailers in Winnipeg but only 5 questionnaires were fully completed and returned. The Director considered that these few returns provided a very narrow basis for generalization but thought that the information they contained might suggest the nature of the impact of the price competition that developed in the sale of cigarettes in Winnipeg. All 5 returns were received from combination grocery and meat stores for which sales of cigarettes accounted for an average of approximately 7% of their total sales. Only one of the 5 retailers

reduced the price of cigarettes. The sales information received was tabulated for three periods - Period 1, preceding the reduction in price of cigarettes; Period 2, the time between the first reduction in price and the increase in price by the chain store to 32¢ and Period 3, following the increase to 32¢. In the following table sales during Period 1 are shown as 100 and for other periods as percentages of sales in Period 1. The manufacturers' suggested price of cigarettes was 39¢ per package prior to the reduction in excise taxes and manufacturers' prices on February 23, 1953, when it became 33¢.

Table 20. - Sales of Cigarettes and Total Sales of Five Independent Retailers, Winnipeg, February - April, 1953

	Period 1			Period 2			Period 3		
	Cigarette Price	Cigarette Sales	Total Sales	Cigarette Price	Cigarette Sales	Total Sales	Cigarette Price	Cigarette Sales	Tota[l] Sale[s]
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Per Diem Sales of Retailer "A"	39¢	100.00	100.00	30¢	111.50	92.11	33¢	124.00	108.
Per Diem Sales of "the Others"	39¢	100.00	100.00	33¢	74.39	93.92	33¢	82.42	97.

The retailer who reduced prices, Retailer "A", reported an increase in cigarette sales during Period 2, but a decline in total sales somewhat greater than the other retailers who did not reduce prices and whose cigarette sales declined substantially. In Period 3, when all retailers reported selling cigarettes at 33¢ the first retailer had a further increase in sales of cigarettes and an increase in total sales. The other retailers also reported increases in both classes of sales but to a lesser extent. It is clearly not possible to draw any general conclusions from such a few returns.

The Director received information from the chain store making the price reductions for four-week accounting periods which was the basis on which the chain store maintained sales data. The periods in 1953 did not coincide with the dates of the price changes in cigarettes, but as comparative data for 1952 were received it was considered that any significant changes would be reflected in the periods most

closely approximating the times of the price changes. The following table shows the changes in sales of cigarettes and total sales, sales in both cases taken as 100 for the four-week period ending January 26, 1952:

Table 21. - Sales of Cigarettes and Total Sales of One Chain Organization, Winnipeg

Four Weeks Ending	Sales of Cigarettes		Total Sales	
	(Sales in dollar volume for the 4-week period ending January 26, 1952 = 100)			
January 26, 1952	100		100	
January 24, 1953		94		108
February 23, 1952	92		111	
February 21, 1953		117		112
March 22, 1952	105		114	
March 21, 1953		336		120
April 18, 1953		231		123
May 16, 1953		139		124

In the four-week period ending March 21, 1953, there was a very sharp rise in cigarette sales, compared with preceding periods in 1953, and comparable periods in 1952. Total sales in the same period also increased but it will be noted that total sales had also increased in comparable periods in 1952. Approximately half of the increase in total sales in the period ending March 21, 1953, were accounted for by the increase in the sale of cigarettes so that the remainder is not out of line with the rise in sales which had taken place independently of reductions in cigarette prices. In the periods following the change in the price of cigarettes to 32¢ per package on March 30, 1953, there was a considerable falling off in sales of cigarettes, compared with the period ending March 21, 1953, although the level remained higher than in the period preceding price reductions. Total sales, however, continued to increase which suggests that the reductions in prices of cigarettes had not had a very strong effect on the total business done by the chain store.

Vancouver. The same chain store which reduced prices of cigarettes in Winnipeg in February, 1953, reduced prices in Vancouver on March 19, 1953, from 33¢ per package to 31¢ for a single package, 89¢ for 3 packages and $2.95 for a carton of 10 packages. Representations similar in nature to those made by retailers in Winnipeg were received by the Director and a statistical check on the effect of the

reduction in cigarette prices on sales of independent retailers was attempted in Vancouver along the same general lines as in Winnipeg. A questionnaire was sent to approximately 80 retailers. Complete returns were received from 12 retailers which was considered too small a number to provide a basis for confident generalizations, but again it was thought that the limited statistical information might indicate roughly some of the changes in the trade.

The Director stated in the Green Book (pp. 224-225):

> "Of the twelve completed returns, six were received from retailers of groceries or groceries and meats whose sales of cigarettes accounted for approximately 10 per cent of their total sales, three were received from drug stores for which cigarettes accounted for approximately 11 per cent of total sales, one was received from a retailer of confectionery whose sales of cigarettes reached 21 per cent of his total sales, one was from a restaurant for which cigarettes accounted for just over 24 per cent of total sales, and one was received from a tobacconist whose sales of cigarettes were just over 69 per cent of his total sales.
>
> . . .
>
> Six retailers reduced prices in the second period to 31 cents (plus tax). Of these, five were grocery outlets and one was a drug store. An additional three retailers - grocery and meat, confectionery, and tobacconist - reduced their prices in the third period, and three retailers - restaurant, grocery and meat, and confectionery - had not reduced their prices at the time the questionnaires were returned to the Director."

As the experience of one retailer, "A", who reduced prices, diverged so much from that of the other five, a separate index was prepared for his sales data. The following table shows the changes in sales for the respective groups of retailers during the periods indicated. Sales in the period March 2 to 14, 1953, are taken as 100:

Table 22. - Sales of Cigarettes and Total Sales of Twelve Independent Retailers, Vancouver, March - April, 1953

	(March 2-14)			(March 23-April 4)			(April 13-25)		
	Cigarette Price (excl. tax) (1)	Cigarette Sales (2)	Total Sales (3)	Cigarette Price (excl. tax) (1)	Cigarette Sales (2)	Total Sales (3)	Cigarette Price (excl. tax) (1)	Cigarette Sales (2)	Total Sales (3)
Per Diem Sales of Retailers Reducing Price in 2nd Period									
1 Retailer "A"	33¢	100	100	31¢	206.8	116.7	31¢	126.9	102.8
5 Retailers	33¢	100	100	31¢	65.8	84.2	31¢	90.9	92.6
Per Diem Sales of Retailers Reducing Price in 3rd Period									
3 Retailers	33¢	100	100	33¢	80.9	100.9	31¢	76.8	85.1
Per Diem Sales of Retailers Not Reducing Prices									
3 Retailers	33¢	100	100	33¢	73.5	90.0	33¢	63.7	90.0

Retailer "A" showed a large increase in sales of cigarettes in the second period, after reducing prices, and also an increase to a lesser extent in total sales. Sales of cigarettes fell off in the third period, although remaining above the level of the first period and total sales declined almost to that level. The other retailers who reduced prices during the same period had a substantial decline in sales of cigarettes in spite of the reduction and in total sales as well. It will be noted that the sales of these five retailers declined more in the second period than those of the retailers who had not reduced prices at this time. In the third period, sales of cigarettes and total sales of the 5 retailers were approaching the levels of the first period.

The total sales of retailers who did not reduce prices in the second period remained relatively stable for 3 retailers and declined 10% in the case of the others. Sales of cigarettes declined in both cases in this period although, again, to a lesser extent in the case of the first three. Those retailers who waited until the third period to reduce prices had a significant decrease in total sales in this period and a further, but lesser decline in sales of cigarettes. The sales of the remaining three who did not reduce the price of cigarettes showed no further decline in total sales although sales of cigarettes continued to drop.

Information on sales of cigarettes and total sales was obtained by the Director from the chain store making the price reduction on March 19, 1953, for its stores in the city of Vancouver during the two-week period preceding the reduction in cigarette prices and for succeeding two-week periods up to May 30, 1953. The following table shows changes in sales during these two-week periods with sales in the period March 5-18, 1953, taken as 100:

Table 23. - Sales of Cigarettes and Total Sales in City of Vancouver, Twenty-Eight Stores of Chain, March - May, 1953

Two Weeks ending	Sales of Cigarettes	Total Sales
	(Sales in the period March 5-18, 1953 = 100)	
March 18, 1953	100	100
April 1. 1953	1,062	108
April 18, 1953	443	103
May 2, 1953	443	103
May 16, 1953	452	105
May 30, 1953	438	100

The index of sales of cigarettes for the two-week period, March 19 - April 1, 1953, shows a ten-fold increase, while total sales increased only 8% which was less than the increase in dollar value of cigarette sales. In the subsequent period sales of cigarettes dropped

sharply but were about four times larger than in the first period. Total sales in three of the four periods following the reduction in cigarette prices were larger by about the amount of the added value of cigarette sales than in the base period, but in the fourth period were about the same as in the base period. The Director concluded that there was no positive evidence that the reduction in the prices of cigarettes had attracted to the chain store sales of other lines of goods, such as groceries and meats.

Central Canada. As previously mentioned, in addition to making surveys in Winnipeg and Vancouver, the Director secured information as to experiences of retailers during periods when prices of cigarettes were reduced in three individual cases. These related to Central Canada and included one large food chain, one local chain and a drug store in Ontario.

The food chain, which operated stores in Quebec and Ontario, had the following prices for standard brands of cigarettes between January 2, 1952, and March, 1953, in relation to the "regular" or manufacturers' suggested retail prices.

	"Regular" Price	Prices of Chain Store	
		Quebec Stores (excluding provincial tax)	Ontario Stores
	¢	¢	¢
January 2, 1952	42	41	41
April 10, 1952	39	39	39
January 8, 1953	39	36	36
February 23, 1953	33	33	33
March 2, 1953	33	31	30

It was indicated that in a few instances, owing apparently to local competitive conditions, cigarettes were sold at prices lower than those listed above.

Comparative figures for sales of cigarettes and for total sales of all merchandise were obtained by the Director for March, 1953, when cigarettes were being sold at reduced prices and for the preceding months in 1953, as well as for corresponding months in 1952. The following table shows the sales of cigarettes and total sales in the respective periods:

Table 24. - Sales of Cigarettes and Total Sales, Food Chain, Central Canada

	Sales of Cigarettes (Quebec provincial tax included		Total Sales	
	$	$	$	$
January, 1952	21,200		1,572,165	
January, 1953		67,921		1,993,695
February, 1952	21,633		1,636,080	
February, 1953		83,083		2,165,429
March, 1952	18,221		1,669,871	
March, 1953		88,221		2,186,567

The Director pointed out in the Green Book that information was not presented as to the numbers of stores operated in each period. Nevertheless he considered that the following comments could be made on the figures obtained (Green Book, pp. 260-261):

> "While total sales were rising from January to March, 1953 over the same period in 1952, from a 25 per cent increase in January to a 30 per cent increase in March, cigarette sales were increasing more noticeably. The increase for January, 1953, when a 3 cent reduction below the 'regular' price was adopted was over 200 per cent and by March it was almost 400 per cent. During the three months of 1952 for which we have information, cigarette sales accounted for between 1.09 and 1.35 per cent of total sales; for the three months of 1953, cigarettes had increased greatly in importance, accounting for between 3.41 and 4.03 per cent of total sales."

The local chain from which information was obtained by the Director operated grocery stores in Ontario. The selling prices of cigarettes as established by this chain in comparison with the regular retail prices from January, 1952, to February, 1953, are shown as follows:

	Regular Price	Chain's Price
	¢	¢
January 1, 1952	42	40
April 10, 1952	39	35
February 24, 1953	33	29

It is pointed out by the Director that during the period January to April, 1952, cigarettes were sold by a vending machine. The chain reported that sales of cigarettes in this period were small and separate sales figures were not compiled. The only information

given for this period was the value of purchases of cigarettes for the period January to April, 1952. The following table gives the value of cigarette sales by months from January to March, 1953, and the value of total sales for the same months and for corresponding months in 1952.

Table 25. - Sales of Cigarettes and Total Sales, Chain Store, Ontario

	Sales of Cigarettes		Total Sales	
	$	$	$	$
January, 1952	-		62,306.54	
January, 1953		7,930.15		96,415.44
February, 1952	-		70,721.12	
February, 1953		10,589.69		99,886.77
March, 1952	-		77,255.13	
March, 1953		19,858.59		118,569.12
April, 1952	4,549.85(1)		73,904.08	
April, 1953		17,094.13		111,592.69

(1) Total purchases for the four-month period January - April, 1952 (inclusive).

The Director made the following comments on the figures contained in the above table (Green Book, p. 259):

> "Cigarette sales in 1953 not only showed a very large increase over the 1952 figures but they rose from about 8 per cent of total sales in January, 1953, to about 16 per cent in March, 1953. The rise in total sales in 1953 compared month for month with 1952 varied between approximately $30,000 and $40,000 per month, or an increase of roughly 50 per cent in 1953 over sales for comparable months in 1952. In January, 1953, the increase in cigarette sales accounted for about one-quarter of the increase in total sales; in February, for about one-third; and, in March and April, 1953, increases in cigarette sales accounted for roughly one-half of the increase in total sales. In other words, as sales of cigarettes increased, sales of other products failed to show a similar proportionate rise."

The drug store in Ontario from which the Director obtained information was unable to give the precise dates on which prices of cigarettes were changed but reported that in the period after January 1, 1953, when the regular price of cigarettes was 39¢ , its price was 36¢, when the regular price was 33¢, its price was first 3 packages for 95¢,

and later 30¢ per package.

Sales of cigarettes and total sales of this drug store by months from January to March, 1953, with comparative figures for the same months in 1952, are shown in the following table:

Table 26. - Sales of Cigarettes and Total Sales, Drug Store, Ontario

	Sales of Cigarettes		Total Sales	
	$	$	$	$
January, 1952	1,050		10,850	
January, 1953		2,060		13,360
February, 1952	1,050		10,100	
February, 1953		2,600		12,630
March, 1952	950		10,140	
March, 1953		4,750		15,680

The Director made the following comments on the changes in sales figures shown in the table (Green Book, p. 261):

> "Cigarette sales during the first three months of 1952 ran at about $1,000 per month. By January, 1953, sales had approximately doubled and by March, 1953, had reached a level approximately five times that of March, 1952. Total sales in January, 1953, were roughly $2,500 above sales in January, 1952, and about $1,000 of this increase was in cigarettes. In February, 1953, total sales were again about $2,500 more than sales in February, 1952, and cigarettes accounted for about $1,500 of this increase. In March, 1953, total sales were up sharply by about $5,500 over the comparable period in 1952, and of this increase about $3,800 was due to the rise in cigarette sales. For the three months in 1952, cigarette sales accounted for from 9.37 to 10.39 per cent of total sales, as compared with from 15.42 to 30.29 per cent of total sales in 1953."

According to information secured by the Director of Investigation and Research, a number of wholesalers of cigarettes in Vancouver reduced their selling prices to retailers from $14.55 per 1,000 to $14.00 after the reduction in retail prices by a large chain store in March, 1953. Retailers buying at this lower price would be in a similar position to dealers buying at the direct retailer's price as illustrated in the example at the beginning of this section. The jobber, of course, reduced his customary margin about one-half in order to supply retailers at this lower price. In the example cited by the Director, the jobber's margin was reduced from 7.35% of selling price to 3.71%. While tobacco jobbers insisted that distribution of cigarettes

could not be maintained on such a narrow margin, the Commission received indications that in the distribution of grocery products what had been regarded as customary margins were being reduced, and, as the wholesale distribution of cigarettes was being allied, in a good many cases, with the distribution of groceries, the margin on cigarettes might be similarly influenced. This would not necessarily give the independent retailer a cost equivalent to that of the chain store unit, but it would place him with respect to the cost of cigarettes in somewhat the same position that he has occupied with respect to the cost of grocery products.

Since the conclusion of the hearings the Commission has received information that in December, 1954, a wholesale grocery company with branches throughout Ontario reduced its margin on cigarettes from 7.35% to 4.60%, and that in January, 1955, two large wholesale organizations with extensive operations in Western Canada reduced their prices of cigarettes to approximately the same extent.

While the narrowing of the wholesale margin on cigarettes by large wholesale organizations places the retailers served by them in a better competitive position to meet the lower price competition of the large chain stores, it undoubtedly increases the difficulties of specialized tobacco jobbers who were already affected by whatever loss of volume in the business of their clients had been caused by increased distribution of cigarettes through chain stores.(1) It was contended by representatives of tobacco jobbers that the wholesale margin of 7.35%, suggested by the manufacturers, was a relatively small margin and that their operating expenses were such that it would be impossible for them to meet the low prices currently being offered by wholesale grocers and others, and continue profitable operations. The position now being faced by the tobacco jobbers is somewhat similar to that faced by the wholesale grocers when the rapid development of the chain store and the cash and carry sale of food products brought about widespread adjustments at all levels of food distribution. The cost of distribution of food products through both chain store warehouses and independent wholesalers was greatly reduced under the force of competition, and the drive for greater economies continues unabated, one phase of which is demonstrated by the investments being made by chain store companies and independent wholesale grocers in improved warehouse and distributive facilities. The force of competition in lowering wholesale charges, in another field, was illustrated to the Commission by the representatives of Drug Trading Company Limited,

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(1) Dominion Bureau of Statistics figures for sales of tobacco and confectionery jobbers show that for the Western Provinces as a group the level of sales for the year 1954 as a whole was slightly higher than in 1953, while for the rest of Canada sales in 1954 were from 2 to 3% lower than in 1953. For December, 1954, alone, compared with the same month in the preceding year, sales were very slightly higher in the Maritimes and Quebec, taken together, and in the Western Provinces, and were 2% lower in Ontario.

a co-operative wholesale buying organization operated by a group of retail druggists. One of the purposes in forming Drug Trading Company Limited was to pass on to the members part of the wholesale discount. This co-operative organization has expanded its operations since its beginning in 1904 and now has about one-third of the druggists in Canada as members. In order to offer as favourable terms as those available through co-operative membership, independent wholesale druggists have had to reduce their margins and give their clients the same discount that is granted by Drug Trading Company Limited.

Until the development of chain store competition in the sale of cigarettes, the wholesale distribution of tobacco products had been carried on over very extensive periods under the uniform wholesale margins suggested by the tobacco manufacturers. Now such distribution is being affected by active price competition in the same way as is the case of other kinds of consumer goods. The entrance of price competition into a field from which it has been absent for an extended period is likely to lead to changes both in methods and channels of distribution and also in the scale of distributive margins. It may be that in some circumstances the distribution of cigarettes can be handled more efficiently in connection with the distribution of other lines which are the subject of frequent and regular purchase by consumers. There is no question that some food products are being distributed by some wholesale organizations at margins lower than those now being offered in the case of cigarettes. In other cases and for other classes of retailers it may be that somewhat larger margins will be required to provide the necessary wholesale services in connection with the distribution of tobacco products. In a competitive market it is expected that wholesalers will tend to specialize in those functions of distribution which they can perform most effectively. It has been suggested by some representatives of wholesale jobbers that the influence of an open market in this field should be checked by the maintenance of an arbitrary wholesale margin in the distribution of cigarettes. Not only would this make it impossible for retailers selling cigarettes to secure whatever savings may be possible through lower cost methods of wholesale distribution, and thus prevent them from competing more effectively with chain stores, but it would place the distribution of tobacco products in a protected field distinct from other classes of trade. Unless the same control was placed over chain store distribution, the proposal, of course, would be self-defeating and, as we point out elsewhere, we do not believe that the public should be deprived of price competition in the sale of tobacco products.

(b) Conclusions

The principal feature, with respect to the distribution of cigarettes, which is evident from the information and submissions presented to the Commission, is the appearance of a new competitive element in a trade which in the past has been characterized by the

absence of price competition in the sale of standard lines. This new situation has been the result, in large measure, of the action late in 1952, of tobacco manufacturers granting to certain food chains their wholesale buying terms for deliveries of cigarettes to central warehouses. These food chains had long been generally recognized as wholesale buyers by other suppliers from whom they obtained the goods they distribute.

The fact that up to the end of 1952, cigarettes were distributed generally at more or less commonly accepted prices, which did not make any distinction as to the nature of the service received by the consumer or the quantities in which purchases were made, did not maintain a static situation in so far as outlets for cigarettes were concerned. The buying habits of the public do not remain fixed and it is probable that increased activity by food chains in the distribution of cigarettes from 1953 on merely gave added emphasis to a trend which was already in progress. In this connection the census figures for certain classes of business may be noted. Two kinds of business which have been substantial outlets for tobacco products, including cigarettes, have been tobacco stores and stands and confectionery stores. For the kinds of business for which sales of cigars, cigarettes and tobacco were tabulated in the 1951 Census of Distribution, the sales of tobacco stores and stands accounted for 25.7% of the total sales of such products reported. The sales of confectionery stores accounted for 11.9%. The figures for the last three decennial censuses show the following changes in the numbers of such stores in the period between 1930 and 1951 for Canada as a whole and for the provinces of Quebec and Ontario:

Table 27. - Number of Tobacco Stores and Stands and Candy, Nut and Confectionery Stores, Quebec, Ontario and Canada, 1930, 1941 and 1951

Year	Tobacco Stores and Stands			Candy, Nut and Confectionery Stores		
	Canada	Quebec	Ontario	Canada	Quebec	Ontario
1930	2,420	571	1,290	8,981	4,105	2,105
1941	4,239	1,359	1,909	11,583	5,730	2,554
1951	2,330	471	1,436	8,996	4,669	2,051

It is of some interest to note the shifts in numbers of similar classes of stores in the United States where the trend toward self-service type of operation has probably preceded the movement in the same direction in Canada. The figures in the table below are those from the reports of the Census of Business for the years indicated.

Table 28. - Number of Cigar Stores and Stands and Candy, Nut and Confectionery Stores, United States 1929, 1939 and 1948

Year	Cigar Stores and Stands	Candy, Nut and Confectionery Stores
1929	33,248	63,265
1939	18,504	48,015
1948	14,526	32,876

The submissions made to the Commission expressing concern over recent developments in the distribution of cigarettes divided sharply in the view taken as to the selling prices of cigarettes in chain stores and as to proposals for dealing with the situation. The view of the Retail Tobacco Association of the Province of Quebec, which was shared by jobbers in that province and in certain other sections, was that chain stores were taking an unreasonably low margin in selling cigarettes when compared with the over-all gross margin on their operations. The further view was expressed that cigarettes are distributed through a great variety of small stores operating with very limited resources and purchasing on a hand-to-mouth basis. Such stores, and the wholesale suppliers who must conduct their operations to meet the needs of the small outlets, have no possibility of modifying their costs to meet the present competition of chains in the sale of cigarettes. It was proposed by this group and others of similar view that measures should be found which would prevent any price competition among retail outlets in the sale of cigarettes.

On the other hand, in the submissions on behalf of The Toronto Retail Tobacconists Association, it was admitted that chain stores might find it profitable to sell cigarettes at the prices they were charging. This group did not make any proposals for the limitation of price competition in the sale of cigarettes, but contended, rather, that the opportunities given by tobacco manufacturers to food chains, enabling them to buy on a wholesale basis, should be made available to any responsible group of retailers which could meet all necessary requirements for wholesale buying and assume in an effective manner the responsibility of warehousing and delivery.

It is well-known that in every line of trade there are variations in markups among the different lines of merchandise handled. Products which are bulky, slow-moving and require special handling or servicing normally carry a higher markup than goods which have a rapid turnover and are easy to stock and handle. The Commission was struck by an example given in the brief of one food chain to support the contention that cigarettes at $2.95 per carton were much more profitable than the average grocery item stocked. It was pointed out that with a selling price of $2.95 the margin over cost for a carton of

cigarettes was 26¢, whereas a carton of individual cereals of about the same bulk and weight had a margin of only 5-2/3¢. The brief then stated:

> "Even though percentage-wise, cigarettes in cartons carry only an 8% markup compared to 14% for the cereals, it is plain that in dollar and cents terms, cartons of cigarettes have the larger spread, with 26¢ against 5-2/3 cents.
>
> When relative turnover is considered, we find that cigarettes are one of the fastest moving items in the store, even faster than variety packages of cereals."

A further comparison was made of the relative costs and selling prices per ton of groceries and cigarettes for one division of the chain, which showed that the gross margin per ton of groceries handled was about $69, while the gross margin for cigarettes at $2.95 per carton was $635. The comment was then made:

> "When the much greater gross per ton of cigarettes is considered, against their rapid turnover and ease of handling, it is obvious that cigarettes are <u>much more profitable</u> than the average grocery item stocked . . ."

It must be noted, of course, that the average cost of a ton of groceries was $394, whereas the cost of a ton of cigarettes was $6,563, so that the amount of investment has to be taken into consideration as well as the gross margin and rapidity of turnover. This example is not cited as conclusive, but merely to indicate that a percentage markup, in itself, cannot be taken as the measure of profitableness or unprofitableness.

The Commission does not consider that there are sound reasons from the viewpoint of the public interest to distinguish the distribution of cigarettes from the trade in other goods. The consumer is as much interested in making purchases of cigarettes in a competitive market as in the purchase of other goods. As the sale of cigarettes in cartons has demonstrated, there are a great many consumers who desire to make their purchases at the lowest possible price with the minimum of service. When a commodity is sold at the same price regardless of the service given or the quantity purchased at any one time, such consumers are denied the opportunity of making a choice between more service and a lower price. This is not to say that being given a choice all consumers will necessarily choose the lower price. There are consumers who are more interested in making their purchases from the viewpoint of convenience both as to the location of the outlet they patronize and the time at which they make their purchases. It is desirable that there should be retail outlets to serve such demands, and there is no reason why they should not continue to exist to such an extent as the patronage of the public will warrant.

This does not require, however, that the public should be denied the opportunity of benefitting, if consumers so desire, from lower selling prices which are possible through different types of distribution.

One of the surprising features in the situation is that the recognition of chain stores as wholesale buyers of tobacco products should have taken place at such a late stage in the development of the chain groceterias. Many of the comments which were made during the course of the hearings in regard to the trade in cigarettes were very similar to those made during the early stages of the development of the chain store, when it was freely predicted that the eventual outcome would be the disappearance of the independent merchant. The figures cited at the beginning of this chapter show that, by and large, there has been concurrent growth both in the business of the corporate chain and the independent merchant. At the same time it must be recognized that it was possible for the independent merchant to make the adjustments required by the competitive market, because he had the opportunity to try out new methods, either with the assistance of wholesale suppliers or through co-operative effort by a group of independent retailers. We have already referred to some indications that wholesalers of tobacco products are attempting to find methods to reduce the cost of cigarettes to independent merchants who wish to compete in more direct fashion with chain stores selling cigarettes at reduced prices. It may be mentioned in passing that often chain stores offer reduced prices only for carton sales of cigarettes and charge a higher price for individual packages. While it may be expected, therefore, that there will be further developments in connection with the distribution of cigarettes by jobbers, there appears to be no opportunity for a group of retailers by co-operative effort to endeavour to reduce their costs of merchandising. This is due to the fact that tobacco manufacturers, so far, have refused to accept as wholesale buyers any group of retailers already operating a central warehouse for the handling of other products or anxious to do so in the case of cigarettes. The tobacco manufacturers have also been unwilling to indicate the conditions under which they would accept as wholesale buyers a co-operative group of retailers. The representative of the principal manufacturer, when he appeared before the Commission, stressed the perishability of tobacco products and the difficulties of ensuring freshness at the time of sale to a consumer. These difficulties he thought would be increased if a still larger number of accounts was sold directly by the manufacturer. The manufacturer's representative went on to state that nobody could suggest where to draw the line if recognition began to be extended to groups of retailers. We do not think that possible beneficial developments should be held up completely for these reasons, and we think that, in the circumstances it might be desirable for the manufacturers to allow experiments in this direction to be carried out, even at the risk of possible failure, although there should be safeguards to a reasonable extent against such an outcome. We believe that it is the function of business management to accept the responsibility of drawing the line, and it becomes the more necessary to accept this respon- sibility when the sources of supply are few, as is the case with cigarettes

CHAPTER VIII

MEASURES TO CURB LOSS-LEADER SELLING PROPOSED TO THE COMMISSION

1. Attitudes Toward Measures to Deal Specifically with Loss-Leader Selling

There were marked contrasts in the views of those appearing before the Commission in regard to the desirability of measures to deal specifically with "loss-leader" selling, regardless of the particular definition or description given to the practice. These differences were not related directly to the attitude taken with respect to the consequences or degree of price-cutting. Among those who expressed the view that attempts to deal with the practice of loss-leader selling by legislation would be undesirable were persons or organizations who thought that price-cutting, either present or prospective, was of such a nature as to produce detrimental results, as well as others who felt that the practice of loss-leader selling was not being employed in such a way as to create any ill effects of a consequential character.

It appeared to be the general view of those who did not favour specific measures directed against loss-leader selling that, inasmuch as it was extremely difficult, if not impossible, to find a satisfactory definition of the practice in terms of business activity, it would be impossible to find a satisfactory definition for purposes of legislation. The only alternative, in this view, would be to make an arbitrary definition based on the factor of cost and the making of sales at some stated level in relation to cost. Apart from the difficulties of establishing, by legislation, a defined basis of cost, which were considered by many to be very considerable if not insurmountable, it was generally felt by those holding these views that specific legislation of such a nature would produce undesirable results both from the viewpoint of the trade in particular lines and that of the public generally. Either so many exceptions would have to be provided for in the legislation as to make itspractical working impossible, or the measure would operate so restrictively as to put a crippling burden upon enterprise. The following excerpts from the evidence are illustrative of the points of view expressed in this connection:

Canadian Manufacturers' Association

". . . it is impossible to define 'loss-leader' satisfactorily for purposes of legislating for its control, . . ."

(p. 49)

". . . any definition of 'loss-leader' which seems in any degree satisfactory, includes along with harmful practices, so many practices which are not merely harmless but beneficial that it would create more problems than it would solve."

(p. 50)

The Radio-Television Manufacturers' Association of Canada

". . . there is no sound basis upon which to suggest restrictive legislation or Government control in any form with respect to the so-called 'Loss Leader' practice.

It might be suggested that retailers should be forced to sell their goods for some minimum mark-up above the proper cost of the goods to the dealer, but it seems apparent that such legislation would have to provide for a wide variety of exceptions to cover such items as perishable goods, goods in over-abundant supply, goods which had become obsolete, obsolescent or damaged and perhaps, in extreme cases, for certain classes of forced sales. It is our view that any legislation which could be brought down along these lines would either be so restrictive as to put an unbearable burden upon enterprise, or that it would have to contain so many exceptions as to make its practical working impossible. It seems clear that the public interest would not thus be served and that the effect of such legislation might well be to stultify commerce by imposing artificial restraints which, in turn, could only be applied effectively by direct Government control of business."

(pp. 1806-1807)

The Retail Merchants' Association of Canada, British Columbia

"The defining of a loss leader according to cost, or landed cost, or landed cost plus a reasonable markup for handling, has its dangers. Prohibition of loss leading may protect or shield the weak operator. It may interfere with the development of merchandising processes which tend to reduce markups. It may interfere with the reduction of distress merchandise. It may infringe upon the retailer's legitimate practice of holding sales and bargain days. It may subsidize the retailer. It may peg the price of goods."

(pp. 2629-2630)

Retail Merchants' Association of Canada (Saskatchewan) Incorporated

"We do not believe that in the food field so-called price maintenance is either desirable or necessary.

We do not believe that in the food field it is either desirable or necessary to provide legal floor prices by compelling pricing at not less than so much over cost.

We believe that an adequate normal play of honest price competition should be safeguarded."

(pp. 2313-2314)

Province of Quebec Wholesale Grocers' Association

". . . specific loss leader legislation, to our mind, could be nothing but extremely complicated, and all but impossible to enforce."

(p. 4306)

Canadian Association of Consumers

"It seems to our Association that such a definition - [based on cost and specified markup] if accepted and made the subject of legislation - would establish a minimum sales price system as arbitrary as resale price maintenance at its worst."

(p. 1737)

The Co-operative Union of Canada and Le Conseil Canadien de la Cooperation

"To the extent that loss-leader selling is deceptive it is deplorable, but it is only one such practice. We feel that such questionable practices cannot be eliminated through direct legislation because to a degree at least they are inherent in a profit system."

(p. 3750)

Specific proposals for measures directed against loss-leader selling, on some basis which would not require definition of the practice as such, were made in three cases, and the nature of the proposals will be discussed more fully later on. It may be mentioned here that only one proposal, that of The Retail Merchants Association of Canada Inc., would involve a form of direct prohibition. Another proposal, that of the Canadian General Electric Company Limited, was put forward as an alternative to the restoration of resale price maintenance, and would only go so far as to provide a basis for the refusal of supplies by a manufacturer. A third proposal, that of the

Retail Merchants' Association of Canada (Saskatchewan) Incorporated and the National Foods Division of The Retail Merchants Association of Canada Inc., would involve an indirect approach by establishing conditions under which one retailer might secure supplies of goods from a fellow retailer who was offering such goods to the public at low prices.

It will be evident from the foregoing that only in a very limited way were representations made to the Commission in support of specific measures to deal with loss-leader selling as such. The same trend in opinion was evident in the comments which were made by the representatives of a number of organizations in regard to legislation which is in effect in several Canadian provinces and in thirty states in the United States, and which makes it unlawful for retailers, and in some cases wholesalers as well, to sell goods at less than some stated markup over cost. No detailed representations were made in regard to such legislation, but with few exceptions the opinions expressed were along one or more of the following lines - that legislation of this type is difficult to enforce; that when it makes the retailer's own cost the basis of measurement it may handicap him in competition with another having lower costs; that it tends to introduce rigidities into the pricing of goods and may, in some cases, operate to increase the prices of low margin lines; that it is largely ineffective through lack of interest in its enforcement.

The general nature of the legislation in effect in various states is described as follows in the Green Book (p. 280):

> "In general, such legislation applies to wholesalers and retailers and establishes a minimum price on the basis of the 'cost' to the individual dealer. In one type of statute, the 'cost of doing business', which is to be added to the invoice or replacement cost of the retailer, is generally stated 'in the absence of proof of a lower cost' as a certain percentage markup: in many cases 6 per cent, but in others, 8 per cent and even 12 per cent; and as a certain percentage of the wholesaler's invoice or replacement cost, usually 2 per cent. Another type of statute does not fix a definite percentage to represent 'cost of doing business' but lists the various components of that cost and leaves these to be determined, either by an 'established cost survey' made by a trade association, or by the presentation of accounting data to the Courts. Still another version fixes the minimum cost at the invoice or replacement cost. These statutes in general do not prohibit sales below 'cost' unless they are made with intent to injure competitors or deceive purchasers. However, where injury or deception is the effect or result of such sales, they are declared by the statutes to have been intended to injure or deceive, and in many States a prima facie case arises or there is presumptive evidence of intent on the mere making of a sale below cost.

It should be noted that certain types of sales are exempted from the provisions of these statutes. The exemptions vary somewhat from State to State. Generally they include goods sold at bona fide clearance sales, goods which are imperfect or damaged if so designated, perishable or seasonable goods, goods sold under court order, and goods sold at prices to meet competitors' legal prices."

Legislation prohibiting a retailer from offering for sale or selling goods or certain classes of commodities with less than a minimum markup has been enacted in three western provinces, Manitoba, Alberta and British Columbia. The original statute in each case was passed during the nineteen thirties, and it is probable that some of the trade groups which supported the legislation were influenced by contemporary developments in the United States in connection with the adoption of N. R. A. codes and the enactment of laws prohibiting sales below cost in various states.

The Food Products Minimum Loss Act, passed in Manitoba in 1938, prohibited a retailer from offering for sale or selling any food product (including soap) at less than the price charged by the wholesaler, plus taxes and freight to the retailer's place of business, plus a markup of 5% on the total thereof. Perishable products were exempted, and the Commission was informed that meat is excluded from the operation of the Act. As no representations were made at the hearing from trade groups in Manitoba, the Commission did not receive any direct comments on the operation of the legislation.

In Alberta, authority for the Lieutenant-Governor in Council to prohibit by order the sale or offering for sale of any commodity at less than cost plus a prescribed markup was contained in The Department of Trade and Industry Act subsequently entitled The Department of Industries and Labour Act. Since at least 1937, a code for retailing promulgated by order in council under the authority of this Act has included provisions prohibiting a retailer from offering for sale or selling goods at less than 5% above wholesale price. This section of the code has been amended from time to time and in 1948 it was so amended as to define wholesale price as the lowest wholesale price in effect when orders of the Wartime Prices and Trade Board were rescinded, or any lesser wholesale price which may then have been published in any current wholesaler's catalogue. In view of advances in the prices of most commodities since the rescinding of W. P. T. B. orders, it would appear unlikely that the markup provisions would have any general application at the present time. The Commission was not furnished with any information in regard to the operation of the code for retailing in Alberta.

The third provincial statute to which the Commission was referred is the Commodities Minimum Loss Act in British Columbia. The original statute was enacted in 1937 under the title Food Products

Minimum Loss Act, which was changed to the present title by amendment in 1939, when the term "grocery product" replaced "food product" in the legislation. In addition, meat was specifically included and provision made for the allocation of costs and for a price chart to assist in the determination of the relative cost of a particular cut of meat sold at retail. The Commodities Minimum Loss Act prohibits a retailer from offering for sale or selling any grocery product or meat at a price less than 5% above cost. The term "cost" is defined in the Act as the lowest price of a particular product offered generally by a wholesaler to retailers. Various exceptions are made for closing out sales, bankrupt sales, disposal of damaged or perishable goods and sales in other special circumstances.

The General Manager of The Retail Merchants' Association of Canada, British Columbia, informed the Commission that in his opinion the Commodities Minimum Loss Act is an ineffective and inoperative statute, and that as far as is known, no proceedings under it have ever been taken in the British Columbia courts. The view was expressed that an individual retailer would be reluctant to invoke the provisions of the legislation against another retailer, and that, while the Association had sought the passage of the legislation, it would not find it possible to become an active party in seeking its enforcement against an individual retailer. It was also brought out in discussion of the legislation that it would be difficult for an individual retailer to establish satisfactory proof that a particular sale or offer was in violation of the statute.

2. Proposals to Restore Resale Price Maintenance

No suggestion was made with greater frequency at the hearings than that for restoration of resale price maintenance in some form, and, while those not sharing such views were not as numerous in their representations, the suggestion was opposed equally strongly. The proposals ranged from the removal of the general prohibition of resale price maintenance to the granting of exemptions for a particular class of trade or for articles not exceeding a certain value.

The suggestion for the restoration of resale price maintenance was often put forward on the basis that, as it is impossible to define the practice of loss-leader selling in terms which would embrace only the clearly detrimental aspects, resale price maintenance represents the only practical means of controlling such detrimental aspects. There appeared to be implicit in the assumption, in many cases, that the manufacturer of the product was the person best able to determine the prices at which the retailer should sell the product to the public. It is also evident that the desire to see the restoration of resale price maintenance was

prompted in many cases, not only by the possibility of loss-leader selling in a real sense, but perhaps even more by the actuality of widespread variation in prices on a competitive basis. In the representations made on behalf of Canadian General Electric Company Limited it was argued that price-cutting practices which have developed since 1951 may be just as damaging, in the Company's view, as loss-leader selling in the generally accepted sense of the term (p. 856). It was also stated on behalf of Northern Electric Company Limited that types of price-cutting referred to in the brief for the Company as "predatory" would include situations which did not involve loss-leader selling (p. 1595).

A point which was stressed before the Commission by a number of manufacturing and trade groups was that, when there was no prohibition against resale price maintenance, manufacturers' retail prices were not completely maintained. The following extract from the brief of the Canadian Electrical Manufacturers Association is typical (p. 929):

> "At no time in the past was it possible for the manufacturer to wholly maintain resale prices. It was possible to suggest resale prices, and most dealers sold within a reasonable range of them, but there were always special deals and discounts being extended to the public."

In many instances such imperfections in the system of resale price maintenance, in the sense of non-observance of manufacturers' listed prices, appear to have been regarded as a virtue or saving quality in the system. The existence of this feature, often presented as giving a desirable degree of flexibility in what otherwise would be a more rigid system of pricing, was attributed by various parties to divergent causes. On the one hand, there were those who seemed to think that departures would take place under any system of resale price maintenance because it would be impossible for the manufacturer to police all sales by numerous retail outlets, or to check every means of price reduction, such as inflated trade-in allowances, etc. On the other hand, there were those who seemed to imply that the non-observance of resale prices, on some occasions, might have been tolerated or even encouraged by the manufacturer who felt that too rigid observance of resale price might handicap the dealer and impede the wide distribution of the product.

These views are mentioned here because they indicate a strong awareness on the part of wide sections of both manufacturers and dealers of the desirability of a flexible system of pricing in retail sales, even on the part of those who urged a return to the situation existing prior to the passage of the legislation banning resale price maintenance.

The attitudes toward flexibility in prices under a system of resale price maintenance were not shared by all who appeared

before the Commission, and some advocated resale price maintenance because it would have the effect of preventing any variation in price among retailers competing in the sale of the same branded article. The Retail Tobacco Association of the Province of Quebec urged the restoration of resale price maintenance on this basis, whereas the members of The Toronto Retail Tobacconists Association did not favour resale price maintenance, because under such a system they did not feel that they had had opportunity to secure a large volume of business and increase their turnover. It was stated by a representative of the Sunbeam Corporation (Canada) Limited that as far as that Company was concerned any break in price was a loss-leader. It was suggested, on behalf of Drug Trading Company Limited, that any sales below the manufacturer's suggested price could be regarded as price-cutting or loss-leading.

The difficulty of providing for a policy of flexibility in retail prices under a system of resale price maintenance was brought out clearly in the discussion of the first brief heard by the Commission, that of the Canadian Manufacturers' Association. In this brief it was urged that the manufacturer of branded goods be permitted to exercise some measure of control over the price at which his goods are to be resold. In support of this view the Association stated that it agreed with the conclusion of the Lloyd Jacob Committee in the United Kingdom that a manufacturer should not be deprived of the power to prescribe and enforce resale prices for goods bearing his brand. The Lloyd Jacob Committee also considered that there should be an effective policy which would permit beneficial price reductions and expressed the following conclusion on this point (Report of the Committee on Resale Price Maintenance, p. 33):

> "Producers are not, in our opinion, entitled to use resale price maintenance to obstruct the development of particular methods of trading, to impede the distribution by another manufacturer of competitive goods or to deprive the public of the benefits of improvements in distribution. Public policy requires adequate distribution of goods with provision for such price reductions as are justified by low-cost distribution or by a regular policy of distributing surplus profit to the customer."

Although various briefs suggested that legislation be changed to give the manufacturer "some measure of control" over the resale price of his branded product or to permit him to refuse supplies to a dealer who was using the product as a "loss-leader", it appeared on discussion in most instances that the nature of the control which was actually contemplated was the freedom of the manufacturer to establish resale prices and to take such action as he could effectively employ, in the absence of prohibition of resale price maintenance, to secure adherence to such prices or to withhold supplies from dealers whose pricing policy was not considered

satisfactory to the manufacturer. The brief of the Northern Electric Company Limited states (p. 1536):

> "It is appropriate to remark here that, in general, predatory price-cutting cannot flourish where resale price maintenance by the manufacturer is permitted, because of the retaliatory action which can be used by the manufacturer against retailers who price-cut his products in this manner."

Then, in urging that no specific legislation to control loss-leader selling be recommended, the brief stated (p. 1538):

> "Because the question of 'intent' is involved when a price is 'cut', it is often difficult to distinguish between predatory and protective price-cutting and even more difficult to distinguish between the two forms of predatory price-cutting.[1] A single price-cut may be stimulated by a combination of motives, some of which could be commendable, some defensible and some reprehensible."

In replying to a question whether, under a system involving the fixation of resale prices by a manufacturer, efficiency at the distributive level might be less than under conditions of direct price competition among retailers, a representative of Northern Electric Company commented (p. 1549):

> "I would not doubt that at all. I think our case merely points out that to some extent you have a choice of alternatives, and I think none of us will dare to suggest that any alternative that eventually is chosen or suggested will be perfect. It is our suggestion that the least harm to the public interest can come from a set of conditions in which manufacturers with some degree of foresight and consideration, as suggested by the Lloyd Jacobs Report, administer these retail sale prices, under which conditions the retailer is permitted a fair and reasonable amount of competition at retail level."

Although it was claimed during the discussion of the brief of The Radio-Television Manufacturers' Association of Canada that manufacturers had followed a liberal policy in enforcing resale prices when such a policy was not precluded by legislation, it was admitted that in the exercise of control some requirement of strength and solidity was involved (p. 1829).

No solution was offered to the Commission which combined

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(1) The brief had earlier described predatory price-cutting of two types, one nominally profitable to the retailer, by the elimination of some functions, and the other employed to attract customers to the store with the intention of selling more profitable lines.

assurance that the public would have the benefit of effective competition in price among dealers at the wholesale and retail levels with control over resale prices by the manufacturer. The brief of the Canadian Electrical Manufacturers Association referred to the self-regulating system of business enterprise in the following way (p. 932):

> "Free enterprise is what the name implies, a system where business regulates itself because of the laws of supply and demand and the effects of free competition in regulating price."

The absence of resale price maintenance permits free competition in regulating price at the distributive level and no other way of ensuring this result effectively was put forward during the hearings. A representative of the B.C. Retail Hardware Association was of the opinion that the competition which had come into play since 1951 had demonstrated to the manufacturers that goods could be distributed with lower margins than those set under suggested resale prices, and that, if manufacturers now had freedom to enforce resale prices, they would suggest lower retail prices. The opinion as to the economic justification of lower distributive margins was shared by those dealers appearing before the Commission who had built up their businesses on this basis. Further, it may be said that generally the trade groups representing members dealing in consumer durable goods were prepared to concede that, in greater or lesser degree, it had become apparent that business could be conducted profitably on margins lower than those established under the system of resale price maintenance. Manufacturers, of course, were largely in the position of appearing to defend the markups which resulted from the resale prices which they had suggested for each distributive level, but it was explained that such margins were based on what were believed to be average requirements for efficient distribution. It was admitted by some representatives of manufacturing groups that distribution could be conducted profitably with lesser margins, although such admissions were generally made with the qualification that lower costs were secured by the neglect of certain functions in the way of promotion or service which the manufacturer regarded as necessary for sustained consumer patronage.

Various modifications of the system of resale price maintenance were suggested by several individuals and associations and these, in the main, would involve the granting to a manufacturer of the right to withhold supplies from a dealer, subject to prior approval or subsequent supervision by a specified authority. While these proposals were not examined specifically by manufacturers' associations or individual manufacturers who appeared before the Commission, it would appear that generally manufacturers would not be desirous of conducting their business under controls of this kind. It is obvious that to place the dealings between an individual manufacturer and an individual dealer under any form of outside control would involve very direct interference with the conduct of private business, which would raise constitutional questions of a most far-reaching character. Apart from this aspect, however, such interference with the day-to-day

operations of individual businesses would not only be extremely difficult from the administrative viewpoint, because of the nature of the inquiries which would have to be undertaken and the length of time required to secure the facts, but would place an intolerable burden on the conduct of business.

A proposal along somewhat similar lines, but suggesting that there be a statutory condition for the exercise of discretion by a manufacturer to withhold supplies, was made by the Canadian General Electric Company Limited as an alternative, in the event that the power to enforce resale prices was not given to manufacturers. The proposal was put forward in the brief of the ompany as follows (p. 865):

> "We further hold the conviction that the interests of all would be best served by leaving the determination of what is a loss leader to the manufacturer of the particular product involved. If, however, the government is not prepared to give manufacturers this freedom to protect their brand names and good will, then as an alternative we favour the establishing by the government of a minimum markup over the retailer's purchase cost for each class of goods -- a markup that is tied in with the average cost of doing business on the products involved. Goods sold by retailers at less than this markup would automatically fall into the category of loss leaders, and manufacturers or distributors should then have the right to withhold further shipment if they wish to do so."

It was further suggested that the actual limit might be placed at a stated reduction, such as 5%, below the average cost of doing business. While presumably this proposal was considered by its sponsor as being less rigorous than unlimited power by a manufacturer to enforce resale prices, it would constitute, in some respects, a more severe form of resale price maintenance. Although the brief made it clear that no suggestion was intended that it be made illegal to sell a branded product at less than the minimum markup established by law, it is obvious that the statutory designation of a particular level of prices would be taken as fixing a "fair" price, and there would be great moral pressure as well as the threat of discontinuance of supplies to secure the observance of the minimum markup. There is little doubt that legislation of this kind would go far to establish a rigid pattern of pricing for all products which were included. The use of averages as a basis for establishing the approved markup for any class of business, even with a minor variation such as the proposal suggests, would be a very arbitrary measure, in view of the variations in operating costs which exist among different stores in the same line of trade. In addition, there are marked differences in the costs of handling different articles in the same general class, and differences as well between various kinds of businesses handling some of the same products. We are forced to conclude that proposals of this kind would provide a very blunt instrument to control loss-

leader selling and would operate to limit, in a very marked degree, many beneficial forms of price competition among retailers.

3. Proposals for Direct or Indirect Markup Control

(a) Minimum Markup over Cost

It has already been indicated that, in the case of practically all those appearing before the Commission, whether representatives of manufacturing or trade groups, or of consumer, farmer or co-operative associations, the view was generally held that it would be undesirable to have legislation which would attempt to define loss-leader selling. In some cases the objections were directed specifically to legislation which would establish a minimum markup over cost in the sale of any article. While this was the position most commonly taken, The Retail Merchants Association of Canada Inc. did make a suggestion for amendment to the Criminal Code to make it an offence to sell merchandise below a stated cost. The suggested amendment reads as follows, subject to certain additional provisions which were outlined at the hearing but had not been incorporated in the draft put forward:

"1. Definitions:-

(a) Loss leader selling means the practice of selling or offering for sale any article or articles, product or products below cost.

(b) A practice of loss leader selling shall be presumed where there is proof of two or more instances of sales of an article or articles, product or products below cost by any distributor or vendor.

(c) Cost means the manufacturer's lowest selling invoice price of any article or product to the trade, plus taxes and transportation charges, plus the distributor's or vendor's cost of doing business. In the absence of proof of the cost of doing business such cost shall be prima facie the lowest operating cost shown by the Dominion Bureau of Statistics' most recent report for the type or classification of trade involved.

2. It shall be an offence punishable on summary conviction for any distributor or vendor of merchandise or trade articles or products to distribute, sell or advertise for sale any article or articles, product or products as loss leaders.

3. Any person, firm or organization found guilty of loss leader selling shall incur a penalty of not less than $100.00 and not more than $1,000.00 for a first offence and not less than $500.00 or more than $2,000.00 for a second and not less than $1,000.00 or more than $3,000.00 for third and subsequent convictions."

It was suggested that exception should be made in the case of staple food articles or products which have a rapid turnover, such as coffee, sugar, eggs in season, butter, shortening and bread, for which the measure of cost under the proposed amendment should be the "low mark-up recognized by the trade". In advancing this proposal The Retail Merchants Association of Canada Inc. made the following comments as to the manner in which such an amendment should be enforced (pp. 3461-3462):

> "It is our suggestion that whenever a product is sold below cost it should be considered as a loss leader, and the firm, organization or individual who so sells should be deemed to be guilty of an offence.
>
> Of course there are circumstances in which merchandise must be sacrificed, and no one suggests for a moment that a penalty should be involved in such occasions. However, we do suggest that for the purpose of enforcement, it should rest with the firm, organization or individual who has sold below cost, if a charge is laid, to explain to the satisfaction of the magistrate or judge before whom the complaint is brought what the circumstances were, and to show that it was not done with the intention of injuring competitors or reducing competition. If this were provided, I am sure that charges would not be laid unless there had been a real violation of the spirit as well as the wording of the Act. On the other hand the almost impossible burden of proving 'intent' on the part of the offending party would be avoided.
>
> We are sure that merchants, and the public in general, would be satisfied to allow the magistrate or judges to exercise a discretion as to proof to their satisfaction that the intention behind the act was not to reduce and restrict competition and to injure competitors."

The necessity, which The Retail Merchants Association of Canada Inc. clearly recognized, of guarding against the use of any formula or definition in a way which would interfere with the normal competitive conduct of business, is pointed up by the fact that those who made the proposal immediately saw that exceptions and qualifications were required. This emphasizes the views of many others appearing before the Commission, to which reference has already been made, that any attempt to define sales below some stated level of costs as loss-leader selling would have to provide for so many

exceptions that practical working of the measure would be impossible. It will be noted that in the definition proposed by The Retail Merchants Association of Canada Inc. an attempt was made to get away from the actual acquisition cost to an individual retailer and use instead "the manufacturer's lowest selling invoice price" to any member of the trade. While this would permit more flexibility in pricing, in that a particular retailer would not be bound by his own invoice cost, it would undoubtedly make it more difficult to ascertain what particular price should be used as a basis.

A more fundamental question arises in connection with the setting of a floor price below which an article could not be sold as the manufacturer's price of the article plus the cost of doing business or, in the absence of proof of the vendor's cost, "the lowest operating cost shown by the Dominion Bureau of Statistics' most recent report for the type or classification of trade involved". It is apparent that the cost of doing business in any particular establishment is the cumulation of the costs of the various operations which may be conducted and of the costs of handling the various products which may be dealt in. These costs undoubtedly vary within the same establishment for different lines of merchandise and perhaps for different ranges in the same line. There are also variations in costs among different establishments in the same kind of business and there may be even greater variation among different kinds of business handling some of the same lines of goods. The same situation prevails with respect to the markups or margins which may be obtained within one establishment for different lines of goods, and again among different establishments in the same kind of business or in diverse kinds of business with respect to the markup on any product which all may handle. The wide range of markups which is used in the sale of grocery products and is such a common feature of the trade is an illustration of the extent to which an average may be the result of wide differences. This means that there are markups which will be below the average as well as others which will be above. If, therefore, a requirement was imposed that the markup on a particular article could not be lower than the average, the effect would be to raise the prices of all articles on which the markup had been lower than the average. This, of course, would produce a new and higher average in terms of markup. In our view any proposal along the lines suggested could not avoid the result of raising prices above the competitive level. This would not only work to the disadvantage of consumers but would tend to limit the ability of business men to adjust their operations to the situations brought about by market conditions, and thus make it more difficult for them to maintain their positions. This consideration is apart from the great difficulties which we would foresee in the administration of legislation of such a kind.

(b) Acquisition of Goods from a Competitor

A proposal to curb loss-leader selling in the food field, by making articles, selling at what might be regarded by competitors as

especially attractive prices to consumers, available at a discount from the retail price to all retailers who wanted a supply, was put before the Commission by The Retail Merchants' Association of Canada (Saskatchewan)Incorporated, and the National Foods Division of The Retail Merchants Association of Canada Inc. The details of the proposal had been worked out by Mr. A. A. Shelly of Saskatoon, who served for a time as Retail and Wholesale Food Director with the Wartime Prices and Trade Board. The basic provisions of the proposal, which Mr. Shelly dealt with exhaustively and competently at hearings of the Commission in Saskatoon and Ottawa, were set out in the following form (p. 2321):

"1. Obliged to Sell

Except as otherwise provided, any retail unit, upon request, shall sell to any retail unit in the food field, any item commonly sold in food stores, at the lowest net price at which such retail unit had it available to the consuming public on the immediately preceding business day, less the applicable wholesale discount set out in clause 2 hereof."

The following conditions as to quantity of purchases were proposed (p. 2324):

"3. Quantity

Except as otherwise provided, the maximum quantity that the selling retail unit shall be obliged to sell to any one purchasing retail unit of any one given item shall be to a value of $300 after deducting the applicable wholesale discount."

The schedule of wholesale discounts set out a discount of 5% for fourteen commodities or classes of products and a discount of 10% for any other items.

Under the proposal, an exemption was provided for goods priced in error, and if goods were marked as a clearing item the quantity limit would be reduced to 25% of the stock on hand at the time the purchase order was received. In the case of short supply items or goods whose market price had advanced, a retailer would not be obliged to sell at a discount to a fellow retailer, unless his lowest net price to the public on the preceding business day yielded him a gross margin percentage less than the relevant discount set out in the schedule. The proposal would embrace combination sales and would require a retailer offering premiums, coupons, contest prizes, free goods, etc., to make these available to any retailer requisitioning goods to which they were applicable. All orders to a retailer would have to be made in writing and accompanied by payment. Except in the case of short supply and clearing items, a retailer receiving an

order would be allowed reasonable time to replenish his stock or to have the order filled by the wholesaler. The following provisions to secure conformance and to prevent re-purchases were suggested (pp. 2345-2346):

> "14. Indemnity in Case of Non-Conformance
>
> In any case of non-conformance with the provisions of this formula the offending retail unit shall indemnify the opposite retail unit in an amount equal to twice the amount of the wholesale discount that would have applied on the sale which was defaulted."
>
> "15. Not Obliged to Re-Sell
>
> The buying retail unit shall not be obliged to re-sell to the selling retail unit any part of the purchase made under the provisions of this formula except if offering the item to the consuming public at less than the competitive price."

It was conceded that the formula could not usually be applied directly in the case of meat, which may be purchased in the carcass or large section and sold by the cut, and that some modification might have to be worked out. It was suggested that voluntary consumer-retailer committees might be set up in each trading area to serve as a clearing house for information on the operation of the formula.

It is apparent that Mr. Shelly had devoted a great deal of thought to the preparation of his formula and that he attempted to find a method of control which would avoid the criticisms directed against measures providing for minimum markups over cost. Direct action of the type suggested has a certain attractiveness on first sight, because it appears to offer a simple and uncomplicated approach at the trade level to whatever problem may be encountered by the individual retailer. The very fact of its unlimited character, however, is in itself a matter of concern. The proposal would be operative at the desire of any retailer regardless of whether or not severe price-cutting was in evidence. This is made clear in the following explanation of the manner in which the suggested measures would operate (pp. 4014-4015):

> "Any food retailer has the automatic right to buy any given food store item from any other retailer at that retailer's lowest price available to the consumer on the previous business day, less a modest wholesale discount of 5 per cent or 10 per cent depending on the item. Any food retailer has this right so to buy from another retailer regardless of whether or not the price in question is a cut price. That is why, under this formula, there is no occasion to define what constitutes a loss leader, or even what constitutes a cut price. The buying

retailer himself decides if and when it is to his advantage so to buy from another retailer instead of buying from his customary wholesale supplier. He can buy any given item on one and the same day from as many retailers as he may wish to buy from. He may buy that item from each of them in whatever quantity he desires, but not in excess of a $300. value of any one item from one and the same retailer. He must pay for the purchase at time of placing his order with any such other retailer but generally the selling retailer is not required to supply the goods until he has had the opportunity to order and receive such extra supply in the normal course of his business. If the selling retailer so desires, he can arrange with his local wholesale supplier that the buying retailer will pick up the purchase directly from the wholesale plant, so that the selling retailer does not incur any handling costs whatsoever concerning the transaction."

Although, as had already been indicated, the sponsors of the formula proposed by Mr. Shelly expressed the opinion that it was not desirable "to provide legal floor pricing by compelling pricing at not less than so much over cost", it was submitted by another retail organization that the net result of the application of the formula would be that no retailer, particularly one buying on the most economical terms, would offer for sale goods at a price that was lower than 5 or 10%, as the case might be, above his cost of acquisition. It may be argued that only a small proportion of grocery items would be affected if markups were held at levels exceeding 5% in the case of the 14 staple lines, and at 10% or more in the case of all other lines. What the exact effect would be is, of course, impossible to say, but it is evident that a substantial number of food items are sold at low markups, and that if these were increased in any degree the additional payments required from consumers would be very large in total.

While it was argued by Mr. Shelly that food retailers would be very careful not to abuse buying rights which might be provided under his formula, it is clear that the possibility of the purchase requirements of any substantial number of retailers being directed to an individual operator would exert a very strong influence over his pricing policy. This is, of course, the underlying basis of the proposal, otherwise it would not be effective, and the question immediately arises whether it would be confined to those situations of so detrimental a character as to justify such interference with private business operations or whether, because of the lack of definition of the circumstances in which it would become operative, it might be employed to curtail beneficial competitive pricing. The formula, if put into operation, might also have a tendency to reduce the incentive toward cost-saving methods in food retailing because a retailer, whose methods of purchasing and stocking gave him savings of 5 or 10%, as the case might be, in his costs of acquisition as compared with some of his competitors, might find the latter seeking

to share in the benefits of his efficiency by making purchases from him, even in relatively small quantities, at the discounts allowed under the formula. To avoid this likelihood, he would be obliged to set his retail prices higher than he might otherwise do.

The proposal put forward would clearly affect civil rights of the parties in a great many ways. One aspect which was discussed at some length during the hearings is that retailers who sold articles under private brands, which are identified by the public with the sponsor, would be required to make such articles available to competitors if the latter wanted them. The requirement to supply on order would establish a new statutory obligation between the parties, with damages for non-fulfilment. Legislation of this type would be new in Canada, and it was not suggested what constitutional basis, if any, could be found for federal action of such a character. In our view, on both practical and constitutional grounds, it would be unwise to attempt to legislate in such a sweeping way, when some results which might well be anticipated would be clearly disadvantageous and other results are unpredictable.

4. Proposals for Inquiries into Predatory Price-Cutting and Other Injurious Trade Practices

It was strongly urged upon the Commission by The National Council of the Baking Industry that an effective deterrent to predatory price-cutting, in the baking industry at least, could be provided by the establishment of an agency to hold hearings into complaints of such practices. This proposal was put forward in the brief which a delegation from the Council presented to the Commission in May, 1954, and was further commented on in a letter of November 19, 1954, from the Managing Director to the Commission. The recommendation was made in the following form in the brief of The National Council of the Baking Industry (p. 153):

> "(a) That there be established a board of inquiry and regulating authority for the hearing of complaints as to loss-leader and other harmful trade practices -- preferably as a branch of the Combines Investigation Department.
>
> (b) That this board be given adequate powers to arrange conferences or hearings at which specific complaints on loss-leader and other harmful trade practices will be reviewed and, if possible, resolved."

In the subsequent letter it was indicated that no powers of regulation were being suggested. The provisions which were recommended were stated to consist of the following:

"(a) Powers to hear complaints.

(b) Powers to summon attendance at such hearings.

(c) We make no recommendation as to powers to enforce any findings that might develop from such hearings."

The brief submitted on behalf of The Co-operative Union of Canada and Le Conseil Canadien de la Cooperation contained a recommendation along very similar lines. The procedure for inquiry was outlined as follows in this brief (pp. 3752-3753):

"We would suggest that the Commission consider recommending the organization through federal legislation of a board (or commission or committee) which would be available to hear complaints brought before it by any business enterprise feeling itself to be the victim of trade practices injurious to the public interest. The Board would have authority to require the production of information and the appearance of witnesses but would not be clothed with any great measure of regulatory power. Hearings would be held in public and evidence presented would be made available to all interested. Such a hearing with its attendant publicity or even the possibility of such a hearing would have quite a salutary effect upon any of those who are tempted to go beyond the confines of reasonably competitive trade practices.

We believe that this suggestion has real merit and we would like to see it tried. If too many of the offenders persisted in their misguided ways it might be necessary to give the board added authority, but we would like to see this step postponed as long as possible. Public opinion is a potent force, and we have a good deal of faith in the voluntary methods of discussion, negotiation and compromise."

It must be accepted that in the case of both briefs the recommendations are for inquiry into practices which would be alleged to be against the public interest. The Combines Investigation Act already makes provision for inquiries into practices related to monopolistic situations or restraint of trade and into price-cutting on a geographical basis or otherwise having or designed to have the effect of substantially lessening competition or eliminating a competitor. The provision for general inquiries by the Director of Investigation and Research under the Combines Investigation Act is contained in Section 42, which reads as follows:

"42. (1) The Director upon his own initiative may and upon direction from the Minister or at the instance of the Commission shall carry out an inquiry concerning the existence and effect of conditions or practices having relation to any commodity which may be the subject of trade or commerce and

which conditions or practices are related to monopolistic situations or restraint of trade, and for the purposes of this Act any such inquiry shall be deemed to be an inquiry under section 8.

(2) It is the duty of the Commission to consider any evidence or material brought before it under subsection (1) together with such further evidence or material as the Commission considers advisable and to report thereon in writing to the Minister, and for the purposes of this Act any such report shall be deemed to be a report under section 19."

The authority for inquiry by the Director contained in Sections 7 and 8 of the Act include provisions for inquiry whether Section 412 of the Criminal Code has been, is being or is about to be violated. Section 412 (formerly 498A) reads as follows:

"412. (1) Every one engaged in trade, commerce or industry who

(a) is a party or privy to, or assists in, any sale that discriminates to his knowledge, directly or indirectly, against competitors of the purchaser, in that any discount, rebate, allowance, price concession or other advantage, is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage, available at the time of such sale to such competitors in respect of a sale of goods of like quality and quantity;

(b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, having or designed to have the effect of substantially lessening competition or eliminating a competitor in such part of Canada; or

(c) engages in a policy of selling goods at prices unreasonably low, having or designed to have the effect of substantially lessening competition or eliminating a competitor,

is guilty of an indictable offence and is liable to imprisonment for two years.

(2) It is not an offence under paragraph (a) of subsection (1) to be a party or privy to, or assist in any sale mentioned therein unless the discount, rebate, allowance, price concession or other advantage was granted as part of a practice of discriminating as described in that paragraph.

(3) The provisions of paragraph (a) of subsection (1) shall not prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society."

Subsections (1) (b) and (c) define policies of selling goods at lower prices which have or are designed to have the effect of substantially lessening competition or eliminating a competitor. These are among the effects which it was represented to the Commission are produced by predatory price-cutting when the practice is engaged in to any significant degree. It was argued by some of those who appeared before the Commission, including The National Council of the Baking Industry, that an offence under Section 498A(1)(c) (now 412 (1)(c)) would likely be impossible of proof in any court proceedings and that, in any event, action by way of prosecution would be too slow a method of proceeding. This is not to say, however, that the type of situation which would justify inquiry in the manner proposed in the submissions referred to above is not the type of situation contemplated by the legislation. These proposals did not include any measures of regulation, and it was suggested that inquiry, or the possibility of inquiry, would have a substantial effect in lessening the use of predatory practices. The legislation already provides for inquiry into situations or practices involving elements of monopoly or serious restraint of trade and into any policy of predatory price-cutting as defined. It would appear, therefore, that statutory authority now exists for inquiries to be made of the kind suggested, into situations, practices or policies where the actual or potential effect upon competition may be alleged to be of such a character as to produce detrimental results from the viewpoint of the public interest. In view of this fact it would seem desirable to rely on the existing provisions for inquiry, until such time as it is shown that they are inadequate to embrace trade situations which would justify inquiry by a permanent governmental agency.

5. Other Proposals Made to the Commission

In the course of the hearings various other proposals and suggestions were made to the Commission to deal with one aspect or another of what were regarded as detrimental forms of competition. In some cases the representations were not in a sufficiently definite form to make comment possible. In some other cases the suggestions, while more definite, would involve action outside the field of federal legislation. In still other instances the conditions to which the representations were directed did not appear to be related to the practice of loss-leader selling. Certain representations were made to the Commission with respect to the section of the Criminal Code re-

lating to false and misleading advertising, and these are referred to in the chapter in which that subject is discussed.

CHAPTER IX

SUMMARY AND CONCLUSIONS

1. Disinclination of Some Business Groups to Distinguish Between Competitive Pricing and Loss-Leader Selling

Throughout the hearings in this inquiry the Commission was struck by the failure of many representatives of business to make any clear distinction between competitive pricing by dealers and the more extreme forms of price-cutting which could be regarded as loss-leader selling. While such views as those of the representative of Sunbeam Corporation (Canada) Limited that "any break in price is a loss-leader as we see it" and of the representative of Drug Trading Company Limited that "if you sell below the manufacturer's suggested price, I think you could very well say you are cut-pricing or loss-leadering" were only expressed infrequently in such a definite fashion, a similar point of view was implicit in many of the submissions of those who urged the restoration of resale price maintenance.

In the case of most manufacturers' groups, a sharp distinction was made between methods of pricing at the manufacturing level and at the distributive level, either wholesale or retail. In the case of pricing at the manufacturing level it was represented that the establishment of prices was a highly competitive process. A price might be altered because of some action of a competing manufacturer, a change in costs, the accumulation of unsold stocks, the desire to widen the market or for any reason which appeared to justify such action. Freedom of pricing at the distributive level in the case of branded products having a manufacturer's suggested resale price, was not regarded in the same light. Although a manufacturer might make a sudden announcement of a substantial reduction in the price of some branded article without considering that he was jeopardizing the acceptance of that article by the public, it seemed frequently to be the case that similar action in a local market by a dealer was regarded in an entirely different way. The attempt to distinguish between a price reduction by a manufacturer and a price reduction by a dealer rested on an implied assumption that, while there are many considerations which would justify a manufacturer in lowering the price of an article, there are no factors which would justify a dealer in selling articles on lower margins than those indicated or suggested by the manufacturer. Some exceptions were, of course, admitted, such as clearances of seasonal goods and special sales due to financial difficulty but, in the main, the position taken was that only the manufacturer could determine satisfactorily the appropriate retail price of his branded article. Such an approach does not assist in distinguishing between normal

competitive pricing among rival dealers and extreme forms of price-cutting which could be regarded as loss-leader selling. It was generally admitted that there would be differences in costs of acquiring goods and costs of retailing them among retailers in the same market and in different market areas, but those who supported the position that the manufacturer should direct the prices at which his goods should be sold to the public usually contended that cost differences among retailers would fall within a vary narrow range. This opinion that competitive factors arising out of cost differences could not be expected to affect retail prices appeared to rest on two basic assumptions. One was that independent retailers buying on the same terms from a manufacturer would have such similar types of operation and such similar expenses that there would be no significant difference in their costs and secondly, that dealers, such as department stores, buying on more favourable terms because of quantity purchases, had greater expense ratios and thus would not be in a position to lower prices. Such assumptions make no provision for situations where dealers are able to lower costs and sell goods to the public on narrower margins, either through greater efficiency in the conduct of business in a traditional manner or through the use of less costly selling methods, which may also be linked with large-volume distribution.

It would be unfair to suggest in any way that representatives of manufacturers or dealers did not admit the limitations of the assumptions discussed above. In fact, the frequent references to departures from list prices when resale price maintenance was in general practice were an indication, in themselves, that retail margins could not be expected to be uniform among all dealers. At the same time it was usually implied that such departures were spasmodic and did not indicate any significant differences in operating costs.

Major reductions in operating expenses, it was generally contended, could only be made by lowering substantially the range and quality of services provided to the public. The evidence as to differences in operating costs among appliance retailers reporting to the Dominion Bureau of Statistics, cited earlier, indicates that the range of operating expenses in the same class of trade is not as narrow as this argument suggests. Further, the experience of a number of individual dealers who gave evidence during the inquiry is also to the contrary, at least as applied to certain trades, of which the retailing of electrical appliances is a conspicuous example. Their statements show that by adopting as a general pricing policy the reduction of the usual markups, in some instances by as much as one-half, their sales have been greatly increased, without any corresponding increase in their operating costs, the net result being highly profitable. The quality of the service provided by such low markup dealers also appeared to be satisfactory to the buying public as indicated by continued patronage.

2. Prevalence of Loss-Leader Selling

In the recommendation for a thorough study of loss-leader selling the Committee to Study Combines Legislation indicated that one of the objectives should be to determine the prevalence of the practice. This emphasis on the need to determine to what extent loss-leader selling is employed is only to be expected, because without such knowledge it would not be possible to make a realistic appraisal of the effects of the practice. The surveys instituted by the Director of Investigation and Research, the results of which were brought together and published in the Green Book, were made so that the Commission would have before it whatever information could be secured which would assist the Commission in reaching a conclusion as to the prevalence of the practice of loss-leader selling. The invitation of the Commission to all interested parties to furnish any additional information which they could make available was a further effort in the same direction. The detailed information which was contained in many of the briefs received by the Commission, and other material filed during the course of the hearings, suggest that there must be little in the way of relevant information to which the attention of the Commission has not been directed.

It may be noted first that the Commission held hearings at all centres across Canada where there were a sufficient number of persons wanting to make submissions to warrant the Commission arranging for a sitting. On this basis hearings were held at Ottawa, Montreal, Toronto, Saskatoon, Edmonton, Victoria and Vancouver. The sessions held at Ottawa were arranged primarily to meet the convenience of national and provincial organizations and were not concerned in any significant degree with local situations. It is also the case that at other cities organizations with membership extending beyond the area in which the hearings were held appeared and made general representations. Also manufacturing companies which were represented in delegations or individually were engaged, in many cases, in distributing goods on a nation-wide basis. Nevertheless the fact that requests for hearings were made to any significant extent by retailers in a few localities only is considered by the Commission to be a definite indication of the areas in which price-cutting is regarded by some sections of the trade as loss-leader selling. On this basis, and in the light of the information and opinions presented during the hearings, it would appear that aggressive price competition is found to the greatest extent in Toronto, and to a lesser degree in Montreal and Vancouver. Instances of what were regarded as severe price reductions were mentioned in the case of some other cities, but it would appear that these were sporadic in character and did not have the general effect attributed to the actions of some dealers in the three cities named above. The Commission considers it of considerable significance that the representations made since the announcement of the hearings in the inquiry should have been so largely confined to a

very small number of market areas. If there had been marked changes in the pattern of distribution for any major commodities in other parts of Canada, such as those which it was contended were in evidence in the three principal metropolitan areas, it would have been expected that representations much more numerous and definite would have been made in the place of the very few which were received from the Atlantic Provinces, other sections of Quebec and Ontario and from the Prairie Provinces.

The classes of commodities alleged to be affected by severe price-cutting were also narrowly confined. Apart from situations involving bread and cigarettes, which have been reviewed earlier, representations were devoted with few exceptions, to various kinds of household electrical appliances. The principal exceptions were representations of the Retail Merchants' Association of Canada (Saskatchewan) Incorporated and the National Food Division of The Retail Merchants Association of Canada with respect to the distribution of groceries and meats, and those of the Allied Beauty Equipment Manufacturers' & Jobbers' Association with respect to products used by the hairdressing and barbering trades. It seems reasonable to conclude that not only are selling practices which could give rise to fears of loss-leader selling confined to a very large extent to a few market areas, but they are confined, as well, to few of the many kinds of commodities distributed by wholesale and retail dealers.

A great deal of information as to the prices at which various articles have been sold by retailers in many localities in Canada, in relation to the respective retailer's purchase cost of the articles, was collected by the Director of Investigation and Research and published in the Green Book. Much information as to advertised prices of certain classes of articles, particularly household electrical appliances, was contained in submissions made to the Commission. In some cases, the examples were accompanied by information as to the manufacturer's or wholesaler's list prices for the same articles, and in a few cases, information was given as to a manufacturer's special or clearance price for the advertised article. Individual retailers who appeared at the hearings, in a few instances, also gave information as to the relative costs and selling prices of some articles which had been featured at low prices in advertisements.

In the opinion of the Commission this very considerable amount of evidence, which is derived from the many sources indicated, supports the conclusion that the practice of selling articles at prices below net purchase cost is not prevalent in any of the lines of trade for which information was obtained in the inquiry. In fact, it appears that sales on such a basis are made infrequently and the evidence does not suggest in any way that selling of this sort is a practice in any line of trade, even among a minority of the dealers. Inasmuch as the distribution of household electrical appliances was, perhaps, the trade most

frequently mentioned during the hearings, it may be appropriate, by way of illustration to refer again to the situation in this field disclosed by the information obtained by the Director of Investigation and Research. The Director secured reports on the sale of household electrical appliances for 50 stores, of which 44 were independently owned and 6 were branches of chains. Of these two groups only 5 independent stores reported selling any appliances at less than net purchase cost, and the returns showed that, out of the many lines of appliances dealt in, only 8 appliance items had been sold at less than net purchase cost.

In the material collected by the Director and that received at the hearings, many references were made to the sale of some lines of small electrical appliances, generally referred to as "traffic" lines in the trade, by certain large dealers in the larger Canadian cities at very low prices. In many cases the products referred to were manufactured by Canadian General Electric Company Limited, such as electric kettle, featherweight iron and floor polisher. Other products similarly referred to included some made by Sunbeam Corporation (Canada) Limited, such as the "Mixmaster" which are distributed through independent wholesalers to retail dealers. Canadian General Electric Company Limited sells its small appliances to independent wholesalers who, in turn sell to retailers. The Company also sells such appliances through its own wholesale divisions to retailers, at the same prices as those suggested by it for sales by wholesalers to retailers. It has become the practice, it was said, of certain dealers, particularly in Toronto and Vancouver, consistently to advertise and sell such G.E. products at prices considerably below the Company's suggested retail price, and, on some occasions, near or below the suggested price for quantity sales from a wholesaler to a retailer. As the fullest information was obtained by the Commission with respect to the G.E. floor polisher, a brief recapitulation of some price data relating to this article may be of assistance from a general viewpoint:

G. E. Floor Polisher

Suggested Retail Price	$54.50
Lowest suggested price to retailers (lots of 3 or more)	$35.43
Dollar markup	$19.07
Price to wholesaler	$30.25
Wholesaler's markup at suggested quantity price	$ 5.18

The operator of one large volume outlet in Toronto, New Era Home Appliances Ltd., informed the Commission that at the time of the hearings in June, 1954, his regular selling price for the G.E.

polisher was $37.75 and that when he ran a large newspaper advertisement, 100 polishers might be offered for a certain period of the shopping day at $32.95. By buying in very large quantities this dealer said that his cost would average less than his lowest selling price, which meant that the wholesaler was prepared to narrow his margin of $5.18 per unit when selling in large quantities. There is no question that goods are sold in large volume when a particularly advantageous price is featured for a branded appliance in popular demand. New Era Home Appliances Ltd., for example, has found that an advertisement of 100 polishers at a low price appearing in the first edition of the newspaper shortly after noon has resulted in the 100 polishers being sold by 4 o'clock in the afternoon. From information secured by Canadian General Electric Company Limited in regard to the sale of G.E. polishers by Danforth Radio Company, another large dealer in Toronto, at an advertised price of $33.85, the Company came to the conclusion that this dealer sold more G.E. polishers in three days of the sale than all retailers in the whole of metropolitan Toronto would normally sell in a month. It is scarcely necessary to point out the very substantial savings, both on individual purchases and in total, secured by consumers not only from the special sales but at the regularly offered lower prices for small appliances.

It would appear that some manufacturers have planned the distribution of such small electrical appliances on the basis of occasional purchases by consumers from a great number of dealers, and established their suggested resale prices from this viewpoint. The increasing popularity of these products and the ability of some dealers to meet the demand on a volume basis have affected substantially the methods of distribution. One retailer from Windsor, for example, informed the Commission that during an eight-month period, when selling at the manufacturer's suggested retail price, he sold 23 floor polishers, or about 3 per month, while during the ensuing nine-month period, when he reduced the price to $44.95, about 1,700 were handled or an average of almost 200 per month.

The regular sale of standard small electrical appliances at prices well below the retail prices which have been suggested by manufacturers need involve no element of loss by the volume retailer. To some extent it would seem that such products are being handled by such dealers much in the way that ready-packaged goods are handled by a cash and carry groceteria. The customer, in large measure serves himself, and a narrow margin of profit on a great many items sold may make a worthwhile contribution to the general income of the business. The occasional feature sale at prices approximating cost, or even lower in some cases, is of somewhat different character. In its simpler form it is the use of a "bargain" to increase store patronage. In a more complex form it appears to be the result of competitive rivalry among dealers of the same kind. In other words, it is the testing of competitive positions rather than the exercise of market control. Instances of this kind are likely to be spasmodic in character

and, so far as can be seen, are unlikely to become a practice.

The following description of the manner in which floor polishers were distributed during one of the feature sales by a Toronto dealer was given at the hearings by the representative of the Canadian General Electric Company Limited (p. 889):

> "I would ask you to think about Danforth Radio Company, selling floor polishers at a cut-price below their cost, selling about 800 in three evenings. Now, they did not sell 800 floor polishers, but they had them piled in some cases just inside the door and you came in and you paid your cash and you walked out carrying a polisher with you. They did not sell anything. All they did was act as a depot for people to come, an evening depot for people to come and pick this polisher up at a low price.
>
> If we cannot get this across, then I have failed in my presentation; if we cannot get this across that that would never happen if there were not a large number of other retailers stocking and displaying and promoting the same product in that same marketing area."

Although the sale by Danforth Radio Company of Toronto of G.E. floor polishers at a retail price of $33.85 was described in the brief submitted by the manager of the Small Appliance Department of Canadian General Electric Company Limited as a sale below cost, in view of the fact that the Company's lowest list price to retailers, as already indicated, was $35.43, information subsequently secured by the Commission from the Company's wholesale division in Toronto, which had actually made sales of floor polishers to Danforth Radio Company at the time in question, and from other wholesale suppliers, threw a somewhat different light on the nature of the three-day sale of G.E. floor polishers by Danforth Radio Company. In the first place it was found that the floor polishers supplied for the sale by Canadian General Electric Company had been billed at $35.40, rather than $35.43, and that a 2% cash discount had been allowed. Then the Company's wholesale division had granted Danforth Radio a special promotional allowance of $1477.00, which covered the period of the sale, and while in the accounting of the wholesale division this allowance had been distributed over several lines of products in addition to floor polishers, such allocation had no necessary bearing on the manner in which the allowance might be treated by the retailer.

In response to an inquiry Danforth Radio Company wrote the Commission stating that their net cost for the floor polishers in this special sale was $26,784.06 and that their selling price was $28,197.05, which figures show a gross profit of $1412.99. Danforth Radio Company further stated that it was customary with volume accounts to receive sales promotion monies which were credited in various ways. It seems reasonable to conclude, therefore, that in this

instance Danforth Radio Company credited the special promotion allowance described above to the special sale of floor polishers, since without that credit the profit referred to above could not have been realized.

It should be mentioned that the invoice for the promotional allowance was issued some weeks after the submission of the Company's brief and it is obvious that the manager of Canadian General Electric's Small Appliance Department had not been aware that a special allowance and the cash discount were granted to this customer. On the basis of all the information obtained by the Commission relating to this sale it must be concluded that the featuring of G.E. floor polishers by Danforth Radio Company was a form of promotion for which allowance was given by the manufacturer, and that this allowance was made available in such a way that the over-all cost to the retailer of the products so promoted could be reduced so as to permit the retailer to secure a net return with the selling prices in effect during the special sale. Although in the light of the partial information first presented it had appeared that the sale of floor polishers by Danforth Radio Company might be a striking example of the featuring of a popular article at less than the retailer's cost, the fuller information subsequently furnished showed that it could not be regarded in this way. This instance is further evidence that sales below actual net cost for purposes of leadering are very difficult to find and it serves to emphasize that mere comparison of list prices cannot be relied upon to establish actual cost factors, particularly when large quantities of goods are involved.

Although the manufacturer took the view that dealers selling G.E. floor polishers at such low prices were taking advantage of the promotional work done by other dealers, it may be the case that selling in this manner taps a buying level which would not be reached in any other way. The representative of Canadian General Electric Company Limited also stated that, from a survey which the company made of more than a thousand purchasers of G.E. floor polishers, it was found that 56% said that they were led to buy one by the fact that a friend owned one. Another factor in such low margin selling, one which has become increasingly important in recent years, is found in the steadily expanding activities of manufacturers in the fields of advertising and promotional effort. There can be no doubt that these activities have greatly simplified the retailer's selling task by largely pre-selling branded goods before the consumer enters the store.

This review of part of the trade in household electrical appliances serves to make clearer the need to look at merchandising in the widest sense in order to reach conclusions as to whether the interest of the public in the maintenance of a competitive system of distribution is being affected to its benefit or detriment. If there is a narrowing of distributive margins as a result of competition and there is no failure to meet the needs of the public in terms of the availability

of the goods when required, it would be necessary to show serious shortcomings in the serving of the public in other ways before the new developments in merchandising could be seriously questioned. In the course of this lengthy inquiry no such serious shortcomings from the public viewpoint, in our opinion, have been shown. We consider that in a number of lines substantial changes in merchandising are taking place, but we have not found that loss-leader selling is playing any significant part in these developments. What was described in many instances as the practice of loss-leader selling has been found, on examination, to be competitive pricing on a general basis in the particular business and not the singling out of certain articles as a leader device. There have been some instances reported where articles have been featured at or below cost to draw customers to a particular store. Further examination has shown that in some of these cases sales below cost may not have been involved. In any event we have not found such instances sufficiently numerous or widespread to justify a conclusion that feature sales of this kind can be regarded as prevalent, or as having any significant effect. In most cases when this type of sale is featured it is obviously a form of advertising, and is by no means confined to branded lines of merchandise. The use of a "bargain" as an advertising device has long been familiar in many branches of retail trade. If it is now being employed to a greater extent in some lines of trade than has previously been the case such extension of the device does not change its character. If it is not used in a deceptive way we would expect that consumers would be as well aware of its significance in a field where it has been used less commonly as in those fields where it has already become well established.

3. Conditions Leading to More Competitive Pricing

Some of the factors which have led to more competitive pricing during the last two years have been reviewed in earlier sections of this report. The increase in competition at the retail level is the result, to some extent, of developments in the field of merchandising itself, and also of changes in the general economic situation. In the Monthly Review of The Bank of Nova Scotia for November, 1954, the following comment was made on the more recent situation:

> "In a year featured by moderate recession in the United States, by a reduction in defence expenditures, by the disappearance of the remaining backlogs of demand, and by the general intensification of competition in world markets, it is scarcely surprising that the Canadian economy has been undergoing a number of difficult adjustments in 1954. The picture, however, is not one of uniform decline. Some industries have shown expansion; and where there have been difficulties, these have varied considerably in nature and degree."

The Monthly Review went on to point out that among the industries which have been substantially affected by the overtaking of accumulated demands were those producing household electrical appliances, other than television sets.

The changes in general economic conditions have been among the most important factors affecting merchandising in Canada and the fact that the change from a sellers' to a buyers' market became more pronounced some time after the passage of the legislation prohibiting the practice of resale price maintenance does not make one the consequence of the other. It is beyond question that competitive pricing becomes more significant when there are accumulated stocks of consumer goods resulting from over-anticipation of market requirements or a slackening in the rate of purchases. In addition, manufacturers of consumer durable goods have greatly expanded their productive facilities and are influenced by plant capacity to maintain volume of sales at the highest possible level. It is not surprising that the trade in household electrical appliances was the subject of such frequent mention during the inquiry, as the conditions just mentioned existed in this field. That more active competition in the sale of such goods would occur, once the pent-up demand from the period of shortages had been satisfied, was only to be expected. The removal of resale price maintenance did not affect the underlying market conditions, although it may have permitted market forces to operate more freely than otherwise might have been the case. Information available in regard to developments in the retail distribution of similar products in the United States suggests that attempts to control resale prices, in a period when market conditions are conducive to more active price competition, may stimulate the growth of new types of outlets at the expense of those subject to the manufacturer's control with respect to resale prices.

In the United States, with the exception of Missouri, Texas, Vermont and the District of Columbia, resale price maintenance is widely practised under so-called "fair trade" laws, which permit a manufacturer to establish resale prices and to take legal action against a dealer who fails to observe such prices. Although many manufacturers of nationally advertised brands of household electrical appliances in the United States established resale prices under the provisions of such state laws, and some undertook very extensive legal proceedings in an endeavour to secure the observance of such prices, the information available indicates that larger and larger proportions of such goods are being sold at less than the manufacturers' resale prices. The term "discount house" has been given to stores which make a feature of the sale of branded lines at a large reduction in price, but the sale of goods at a discount is by no means confined to such establishments. In an article on discount houses in Life magazine of August 9, 1954, reference is made to an estimate by the National Retail Dry Goods Association that 95% of all electrical appliances sold in New York now are sold at a discount. The same article contained

an estimate from another source that in Los Angeles County discount houses account for 55 to 70% of the sale of major appliances, such as refrigerators, ranges and washers. The New York Times on November 14, 1954, made the following reference to a survey of discount selling by the United States Chamber of Commerce:

> "The United States Chamber of Commerce last week reported that fully 18 per cent of all retail sales, or about $25,000,000,000 a year, were made by discount outlets of some type. It further reported that merchandise sold at a discount (including that sold at regular stores) totaled a whopping $50,000,000,000 a year."

Professor F. W. Gilchrist of the University of Southern California, speaking to the annual meeting of the American Marketing Association in Detroit on December 28, 1954,[1] referred to the estimate made by the United States Chamber of Commerce and also to an estimate of discount sales made by Sales Management. He quoted Sales Management as estimating "that at the close of 1954, 30 per cent of the nation's retail business was accounted for by under-list selling."

The above estimates appear to be pretty conclusive. Notwithstanding the legal bars raised by "fair trade" laws, and the strenuous efforts of some manufacturers to enforce them, market conditions and competitive forces were such that in 1954, a very substantial proportion of all retail sales in the United States were made at a discount.

The Canadian market for consumer goods differs in many ways from the market in the United States, but the economies of Canada and the United States are so inter-related that trends in one country may have much significance for the other. This seems to be the case with respect to retail distribution, which has so many parallels in the two countries, in spite of the much larger volume of trade carried on in the United States. More active competition has characterized retail trade in both countries during the past two years, but in the absence of resale price maintenance, it is possible that progressive dealers in Canada have had greater freedom to adapt their operations to the situations brought about by changing market and economic conditions.

4. Adjustment to Changed Conditions by Manufacturers and Merchants

Those factors which, in the Commission's opinion, are having the most significant effects on the distributive trades are

(1) Dr. Franklin W. Gilchrist: "The Discount House and Channels of Distribution".

inherent in the competitive system, and cannot be interfered with without injury to the effective working of the competitive process. These competitive factors are relied upon to secure the introduction and adoption of methods which will lead to greater efficiency and permit the greater satisfaction of consumer wants. Developments in this direction are of general benefit to industry and trade. They make possible the more effective use of resources, and by widening the market they also make possible production in larger volume and distribution on a greater scale. By so doing they satisfy more wants of consumers at lower cost.

As long as the backlog of consumer demands which had been accumulating during the period of the war and immediate post-war shortages had not been satisfied, traditional modes of distribution could be used without the dealer running the risk of putting himself at a serious competitive disadvantage. As this period passed and the greatly enlarged productive capacity for many lines of consumer durable goods began to make itself felt in the market, an opportunity arose for the development of retail outlets seeking to secure volume sales on a lower markup basis than had previously been regarded as traditional. Some indication of the increase in production in Canada of such lines as household electrical appliances in the post-war period is given by the following figures for average monthly production of mechanical refrigerators, domestic washing machines and radio sets in 1939 and in 1952, 1953 and 1954:

Table 29. - Average Monthly Production of Refrigerators, Washing Machines and Radio Sets, 1939, 1952-1954

Year	Mechanical Refrigerators	Domestic Washing Machines	Radio Sets
		(thousands)	
1939	4.29	8.66	29.0
1952	19.74	20.67	40.5
1953	22.84	21.15	62.8
1954	19.67	17.94	38.1

Source: Canadian Statistical Review
(Dominion Bureau of Statistics)

It appeared to be the opinion of many manufacturers of household electrical appliances, as expressed in representations made to the Commission, that production in large volume could continue to find a market under the customary markup structure, which had been developed for the distributive trades when the output of consumer goods was on a much smaller scale and the potential demand much more limited. At the same time the growth of large volume dealers operating on lower

margins is evidence of the fact that they are playing an important role in the distribution of branded goods and, in the opinion of the Commission, it seems unrealistic to imply that the lower prices of such dealers and the general effect of such selling in lowering distributive margins in the appliance field, have not had significant influence in widening the market and thus in the maintenance of high level purchases of such goods by consumers.

Recently the General Electric Company which is one of the largest manufacturers of household electrical appliances in the United States, as its related company, Canadian General Electric Company Limited, is in Canada, announced that it had decided to abandon factory-set retail prices on almost all its major appliances and would make its local distributors responsible for establishing recommended retail prices. This action was being taken, according to a statement quoted by Business Week on November 27, 1954, "to meet the highly competitive and volatile conditions existing within the individual markets." Commenting on the decision of General Electric Company, which it regarded as indicating a reversal of the trend toward greater reliance on the manufacturer's list or "administered price" in the United States, Business Week stated:

> "In the past few years, the nature of competition in the appliance industry has changed markedly. These are some of the considerations today:
>
> Mass production. Appliance makers, like the car makers, have forced into the market the vast quantity of goods they must manufacture in order to keep the mass-production system working right. Forcing goods on distributors who, in turn, must force them on dealers has led to the existence of a lot of distressed goods.
>
> Discount houses. These are the inevitable product of the system. Manufacturers must have big low-cost volume. The discount houses give it to them, so they can't do much about fighting the cut-rate houses. Indeed, GE dealers charge widely that the company's own distribution branches sell to discount houses. One thing is certain: Discount houses by their low-cost operations have helped to slash the cost of marketing appliances."

A large volume of production by a manufacturer reduces unit factory costs and permits him to reduce his selling prices to dealers. Similarly a large volume of sales by a dealer reduces his unit costs of operation, permitting him to lower his markup and thus reduce prices. Again, purchasing in large quantities lowers his buying costs and permits further reduction in his selling prices. Lower prices resulting from these or other causes are bound to produce a widening of the market. The effect of lower

prices in widening the market is illustrated by an account given in the Vancouver Sun of December 17, 1954, of the experience of one Vancouver dealer in selling automatic clothes dryers. According to the newspaper report, production on a large scale had reduced unit factory costs and dealers were offered a low price for large purchases. The dealer in turn reduced the price to the public by about one-third. The newspaper reported the dealer's comments on the increased volume of business as follows:

> "The volume of production is giving us a price we think will give a big volume of sales. We are buying dryers now at 20 times the rate we were just six months ago."

The Commission believes that many manufacturers and merchants in Canada have been too much concerned in attempting to maintain conventional practices and have not given sufficient attention to adaptations which may be necessary under present competitive conditions, and which are assisted by the more ready acceptance on the part of the public of many classes of goods, with little or no selling effort being required at the stage of consumer purchase. The Commission was impressed by the realistic attitude taken by the general manager of the British Columbia Division of The Retail Merchants' Association of Canada, in regard to the breaking down of trade classifications in the distribution of many consumer goods. He expressed his attitude as follows (pp. 2706-2707):

> "The ancient conception of trade classifications and of strictly defined trade classification, is breaking down. Merchandise tends to be sold in the way in which it is sold most readily, that is to say some goods turn out readily and are easily pre-packaged. They tend to be sold together, because they lend themselves to a certain type of retailing. It is perhaps an advance in sales practices.
>
> I do not believe any association should stand in the way of such developments. It may be hard on one retailer to see an item which he has stocked for many years, and in which he has believed he had some proprietary right, move up and become established in another form. However, I believe that is part of the pain of retailing . . ."

When dealers conducting their operations in a conventional manner are faced with a new development in distribution, which results in some product which is widely stocked being sold at much less than the customary markup, and yet on a profitable basis by the innovator, because of the change in method of handling, a decision as to future dealing in the product must be made. The dealer who has been operating in the traditional manner must decide whether to adapt his method of handling the product to the new competitive technique, whether to give up handling the product and confine his stock to products

not so affected, or whether to content himself with serving that part of the public which is more interested in service than in price, and by so doing probably suffer some loss in volume of sales of the particular article.

5. Changing Pattern of Distribution

The growth in the Canadian market for consumer goods and changes in the buying habits of consumers have provided the opportunity, in our dynamic economy, for new methods of distribution to be tried out and to be given wide development when they have found favour with the buying public. The pattern of distribution has never been a static one in Canada, and each period of development has required that adjustments be made to new situations. In the current period shifts in distribution are tending, in some fields, to cut across traditional lines, both in regard to classes of commodities and methods of dealing in them. The maintenance of large-scale production of consumer goods has provided the stimulus for volume selling, which some dealers have secured by purchasing in quantity and selling on narrower margins. The greater acceptance by consumers of goods on the basis of manufacturers' brands has enabled dealers seeking large volume sales to narrow the range of services and facilities offered to the public and at the same time perform the essential functions of distribution.

The desirability of providing opportunity for the development of new methods of distribution was stressed in a recent report prepared by the Organisation for European Economic Co-operation under the title "Productivity in the Distributive Trade in Europe". Although the authors did not refer to developments in North America, their conclusions as to the most important lines for improvement are of considerable interest. The following comments were made in the report in regard to innovations in the field of distribution:

> "Fourthly there is the need to encourage and permit the unfettered development of new ideas, new methods and new techniques in distribution. In relation to the narrow issue of the cost of distribution it is probable that only by the development of new methods of distribution that cut across traditional ways and that limit in some respects the volume of services provided to the consumer will any significant reduction be achieved. A reduction in the actual cost of distribution is of course not the single aim of efforts to improve productivity in distribution. The provision of more services and services that are better suited to the wishes of the consumer may be the aim in some instances while reductions in cost the aim of others. But the advocates of both policies must accept the consumer, educated it is hoped as outlined above, as the arbiter between

the different methods and techniques rather than the organisations of existing distributors or Governmental bodies."

One of the purposes of using a brand in the distribution of consumer goods is to secure the identification by the consumer of a specific article with a particular manufacturer. All the manifold means of advertising are employed to this end and a manufacturer who is highly successful may then use the same brand as a means of identification for widely differing types of articles. It was evident in the inquiry that many manufacturers of nationally advertised products had succeeded in their objective. Many indications were given that consumers are placing increasing reliance upon brands in making their appraisal of goods before purchasing. The function of informing the consumer of the desirable qualities of an article and of enabling him to make such comparisons as he thinks necessary is being performed to an increasing extent by the manufacturer. The consequence is that the role of the dealer in cultivating consumer demand is becoming less important, and self-selection by the consumer increasingly more important. It also was evident in the inquiry that increasing reliance by consumers on brand names widened the creation of demand through personal contact among householders. Surveys were referred to which showed that the incentive to purchase in many cases was the result of the satisfaction a friend had obtained from a particular branded article. The reliance of consumers upon manufacturers' brands may be said to produce cumulative effects, as the wider acceptance of his product leads the manufacturer to extend his advertising and other promotional activity and the greater the impact of such promotion on the market the greater will be the reliance of the consumer on brands and brand names, if satisfaction has been secured by himself or his friends on earlier occasions. The manufacturer of branded goods has thus become more directly concerned in the response of consumers and in seeing that they remain satisfied with his products. Manufacturers in some areas and for some lines of appliances have assumed the responsibility of servicing products in consumers' hands, which, of course represents a shift of function from the dealer to the manufacturer.

6. Change to a Buyers' Market

During the time of shortages in the war and post-war periods a backlog of demand was built up for many lines of consumer durable goods. This unsatisfied demand was the result not only of the suspension of production or the limited output during the war and immediate post-war periods, but also of the rise in consumer incomes and the growth of population. While this backlog of demand was being overtaken there existed what may be loosely called, "a sellers' market", where the emphasis was more on customers seeking goods than on goods seeking customers. The situation in Canada was also affected by the limitation of imports, as a part of currency controls, during the

years 1948 to 1950, the removal of which coincided with the upsurge in buying occasioned by the outbreak of the Korean War.

The sustained demand for consumer durable goods led to the expansion of capacity by existing producers and also to the entry of many new firms into various fields of manufacturing and distribution. The backlog of consumer demand was overtaken more quickly for some goods than for others, but by the latter part of 1952 and still more in 1953 there were clear indications that the change had taken place in most lines from a sellers' to a buyers' market. With the expansion which had taken place in the number of manufacturers and dealers in Canada, the enlargement of productive capacity and the increase in imports, the change from a sellers' to a buyers' market necessarily altered substantially the competitive situation in the production and sale of consumer durable goods.

Manufacturers' efforts to maintain large volume sales under the conditions of a buyers' market have led to renewed emphasis on model changes in many lines of consumer durable goods. With the greatly enlarged scale of output compared with pre-war years, changes in models have added a further strong competitive factor in the more recent period, by the recurrent pressure to find outlets for models being discontinued, before the new models are in full production.

7. Price Competition in the Sale of Branded Goods

It was frequently represented to the Commission during the hearings by some representatives of both manufacturers and dealers that price competition in the sale of a particular branded article had the effect of lessening consumer preference for the article and reducing purchases. In other words, it was suggested that the affording to the consumer of an opportunity to purchase a branded article on a competitive price basis as between dealers would lessen the consumer's goodwill toward the manufacturer's brands. The Commission considers that the weight of the evidence in the inquiry does not support these representations. No positive evidence was submitted which would indicate that a consumer's attitude toward a branded article became less favourable if he found that he could purchase it at a lower price, and in fact the evidence which was given as to the quantities of certain branded articles, which were bought in brief periods when a substantial price reduction was advertised, points in the opposite direction.

It was contended by some manufacturer and dealer representatives that, while price competition in the sale of branded articles might not affect the consumer's goodwill, a manufacturer might find that some dealers would give up stocking an article if they were unable to sell it at a price which would give them what they considered a profitable markup, in the face of strong competition from other dealers offering low prices. They further contended that some dealers who

continued to stock the article would fail to display it properly or to push its sale, and would even disparage it in favour of another article on which a larger profit could be made. It is reasonable to assume however that the lower the price of an article in favour with consumers the larger will be its sale, and there was no evidence to establish that this principle did not apply in the case of branded consumer durable goods. If a manufacturer loses some dealers who are unable to adapt their handling of his product to a competitive market it does not follow that his over-all sales volume will suffer. The interest of large volume sellers to maintain and increase sales volume and the widening of the market through lower prices will be potent factors in sustaining trade in the manufacturer's product. There is also the factor that dealers who wish to maintain patronage will find it undesirable to discontinue a line which is in strong demand by consumers, even if the margin which they can obtain is not as large as they previously enjoyed. No proof satisfactory to the Commission was offered that over-all sales volume had in fact suffered in any instance in Canadian business.

In a good deal of the evidence in support of the argument that goodwill might be lost through active price competition there was an implication that current economic conditions might be changed, through some means, into those which had prevailed during the post-war sellers' market. In this respect there was an apparent failure on the part of some dealers and manufacturers to face the present situation of a buyers' market and consider realistically what adjustments might be necessary to meet current conditions. It is the opinion of the Commission that, when it is fully grasped that methods which may have been appropriate in a sellers' market may require modification to meet the conditions of a buyers' market, means will be found to overcome some of the difficulties which have been encountered or are anticipated. There are indications that in the United States such a realistic appraisal has been made in some manufacturing and trade sections, and new methods are being tried out to meet the conditions of more active competition. There is reason to expect that similar re-appraisal is being made in Canada although the public evidence is not as clear.

8. Premiums and Coupons

The Commission does not consider that the use of premiums and coupons is related to the question of loss-leader selling. Premiums and coupons are generally employed in retail trade to increase the sale of specific goods. In some cases they may have a "leader" function, as where the offer of a premium depends upon total purchases of a certain minimum value. And, of course, the advertising of premiums and the use of coupons by a retailer tend to draw people to the store. While premiums were objected to in some quarters as depriving trades which regularly stock articles which others use as premiums, of the sale of such articles, it was not apparent that the alleged loss of sales

from this cause differed from the loss of other potential business which might be occasioned by other forms of competition. To attempt to control the use of premiums and coupons which are not employed in a deceptive way would constitute a far-reaching interference with the private conduct of business. The Commission has not been convinced that there are indications of actual or probable abuse of the use of premiums and coupons which would justify consideration of legislative action to prevent it. The use of premiums and coupons on an extensive scale must be a relatively costly type of promotion, and there are indications that the attitude of consumers and of retailers, where the latters' co-operation is necessary to the success of the promotion, may place a sufficient check on any abuse of this type of advertising.

9. Misleading and Bait Advertising

Some persons who appeared before the Commission stated that a large part of the disturbance which they considered had been created in the retail distribution of household electrical appliances in the past year or so should be attributed to the nature of the advertising employed by certain dealers in a few large market areas. It was contended that advertisements of a misleading, if not actually fraudulent, character were used in an extensive way. While others held that misrepresentation was not employed by the dealers who had been most successful in building up their businesses through advertising low prices, the belief appeared to be held rather generally that there should be some correction of a good deal of advertising in this field. The more common practices alleged to involve misrepresentation or fraud were described as: (a) the advertising of manufacturer's retail list prices which had no relation to current market prices as a basis of comparison with the offered price; (b) the use of an illustration of a higher-priced model to describe a model of lesser value; (c) the advertising of models not in stock or in token supply only to attract possible customers to whom highly profitable articles might be sold instead of those advertised; (d) the advertising of fictitious trade-in allowances, coupled with an unreal "regular" price, to give the impression of a true bargain, while, in fact, the resulting price to the consumer involves no real reduction or only a much smaller reduction than the trade-in offer would suggest.

There was some evidence that dealers had been encouraged to develop practices of these kinds by the actions of some manufacturers who did not reduce suggested retail list prices, even when the price to a dealer had been substantially reduced by the manufacturer. Such actions would certainly encourage the offering of a real reduction in price through the medium of inflated trade-in values, the dealer ostensibly keeping to the suggested list price. In other evidence it was suggested that manufacturers regarded more favourably the action of a dealer who reduced the retail price by way of trade-in allowance rather than by outright cut in price.

There is little question that the circulation of list prices by manufacturers has provided the setting for a good deal of the types of advertising which were criticized before the Commission. Where retail list prices are quickly superseded by competitive prices, where the clearing by the manufacturer of over-stocked or past season models provides a new cost basis for dealers or where list prices are established or are continued so as to encourage dealers to make inflated trade-in offers, it frequently becomes difficult in some circumstances to distinguish between forms of promotional activity which are regarded as customary in the trade and those which constitute abuses. There can be no question, of course, where a merchant advertises an article which he does not stock or has no intention of selling to a prospective customer, whom he hopes to lead into buying something else. Similarly there is no question as to the detrimental character of advertising which misrepresents the nature of goods by using a false illustration or other inaccurate description, or which misrepresents the value of goods by using a list price which the manufacturer has abandoned. The provisions of the former Section 406 of the Criminal Code, now Section 306 of the revised Code, are clearly aimed at advertising which is untrue, deceptive or misleading, and the Commission has been puzzled why no efforts appear to have been made by trade or other interested groups, or by individual firms, to seek redress under these provisions, in regard to cases of a false or misleading character, particularly where the abuse is regarded as flagrant.

There would also appear to be opportunity for dealers and manufacturers, anxious to check the use of false and misleading advertising, to co-operate more fully with the Canadian Better Business Bureaux, which are devoted to fostering truth in advertising and to opposing fraud and deception and other unethical practices in advertising or selling. The greater the support which the Better Business Bureaux are able to enlist in their work, the more effective their activities should be in improving standards of advertising. Publishers of newspapers probably are not in a position to undertake the checking in advance of statements contained in the advertisements they publish. Nevertheless it could be expected that if, as a result of the work of a Better Business Bureau or of others similarly interested it was established that an advertiser was deliberately misleading the public or making fraudulent claims, a publisher would be prepared to take steps to assist in safeguarding the readers of his journal from any repetition of such misrepresentation. In the case of at least one Toronto newspaper the evidence indicates that precautions of this kind are currently being taken.

10. Distribution of Cigarettes

The general acceptance by cigarette manufacturers of large-scale food chains as direct wholesale buyers has led to a new

competitive situation in the sale of standard brands of cigarettes. The competitive pricing of standard brands of cigarettes on the basis of the lower costs available to large-scale food chains has been represented by some trade groups as a disturbing element of serious character, which may undermine traditional methods in the distribution of tobacco products. One group of tobacco retailers, while regarding the chain store distribution of cigarettes on the lower cost basis as equally disturbing to the trade, raised the question as to why cigarette manufacturers, in making it possible for large-scale food chains to purchase as direct wholesale buyers, have provided no opportunity for groups of independent retailers, willing and able to accept deliveries in the same manner and on similar scale, to purchase on equally favourable terms. The Commission raises no question of the economic justification for tobacco manufacturers accepting certain food chains as wholesale distributors. However, having taken this action, which appears to have been a major cause of the difficulties of which independent tobacco retailers complain, the Commission feels that the manufacturers should assume the responsibility of not denying to independent retailers the opportunity to organize their purchases effectively on a group basis, so as to secure for themselves a cost price for cigarettes as nearly as possible comparable to that of the large-scale food chains. In so far as the retail pricing of cigarettes is concerned, the Commission does not believe that there is justification for distinguishing the distribution of cigarettes from other classes of consumer goods which are competitively priced. Under such conditions the consumer may make the choice between a saving in price with a minimum of service and a higher price with a greater measure of convenience and service.

11. Conclusions as to Loss-Leader Selling

(1) From a trade viewpoint loss-leader selling is not defined in a specific manner. It is a term which is commonly applied to any situation where one dealer emphasizes price in newspaper or other advertising, in a manner which other dealers regard as disadvantageous to their operations.

(2) The Commission has found that the term "loss-leader selling" may be applied by trade groups to any level of pricing, extending from a price in any degree lower than the manufacturer's suggested resale price to a price at or below net purchase cost.

(3) The advertising of a price less than the manufacturer's suggested resale price has been described as loss-leader selling, without regard to the profitability of the sale of the specific article so featured by the advertiser, even if the actual monetary return from the sale of that article is greater than would be obtained otherwise.

(4) In view of the great diversity in the situations to which the term

"loss-leader selling" was applied and the impossibility of finding any basis for reconciling the frequently divergent features attributed to loss-leader selling, the Commission has concluded that no constructive purpose would be served in seeking to find a definition in what would have to be an arbitrary manner. It is obvious that, if the words "loss" and "leader" were incorporated with their real meanings in a definition, a great deal of selling which has been the subject of representations in the inquiry would be excluded immediately. At the same time, any definition drawn on an arbitrary basis might well include types of selling which should be regarded as unobjectionable even from a narrow trade viewpoint.

(5) In the Commission's view, what the representations in the inquiry have actually been concerned with, have been various forms of price competition and advertising methods related thereto. Price competition in distribution is given varying emphasis depending on economic conditions and changes in distributive methods. The Commission therefore, has examined the representations in the light of such factors. It considers that an appraisal on this basis will be more productive than the application of an arbitrary definition from the viewpoint of gaining an understanding of the various situations which have been the subjects of representations in the inquiry.

(6) A merchant may sell goods at or below his net purchase cost to clear end of season or broken lines, to raise money to meet urgent cash requirements, to dispose of discontinued lines of goods and so on. In these and similar cases where the purpose is simply one of disposing of the goods so priced, competitors are not likely to be greatly concerned, although there may be some question at times as to the bona fide nature of the sale and as to the time chosen for making such clearances. The situations, from the standpoint of price, which have been the subjects of representations to the Commission, are of a different character to the foregoing. In almost all cases, they involved situations where a merchant, for the purpose of maintaining or increasing his general volume of business, either spasmodically or persistently features articles at prices which are regarded as significantly below the level of prices of such articles, based on traditional practice in the trade.

(7) The information which has been obtained in the inquiry indicates, in the Commission's view, that sales below net purchase cost for the purpose of increasing the seller's general sales volume are made infrequently, and when such selling is engaged in it is generally for periods of short duration. The offering of goods in such a manner appears to result from active competition among merchants of comparable standing, and not from market domination by any one dealer or group of dealers. Such sales are usually

restricted to a very limited range of articles. While they may create some immediate disturbance for merchants not in a position to sponsor a similar sale, the infrequency of their occurrence and the small number of lines affected make it unlikely that there would be any lasting effects in comparison with the much more substantial influences apparent in the field of distribution.

(8) If, as appears to be the case, selling below net purchase cost for the purpose of increasing the general business of the seller is an infrequent occurrence in the field of retail trade, questions as to the degree of price competition must necessarily relate to the relative markup over cost applied by different types of dealers and in different channels of distribution. The practice of resale price maintenance had been built up on the theory that a common minimum retail markup is required for the general sale of a branded article. The actual situations which have been examined in this inquiry show that this is not the case. Under the stimulus of competitive selling, ways have been found by enterprising dealers to reduce margins below the levels previously regarded as traditional. It has not been contended that those dealers who have been most successful in this way have been operating unprofitably, and it is obvious that such could not be the case in view of the growth which has been achieved. In the Commission's opinion it is the general level of prices established by some large-volume dealers and not the featuring of specific articles which has been the most significant factor in the recent period, notwithstanding that such featuring of specific articles has sometimes been quite prominent. From the information put before the Commission it appears that in some market areas and for some products, particularly household electrical appliances, groceries and cigarettes, there has been a lowering of distributive margins over a considerable part of the trade, to the consequent advantage of the consumer. In their general aspects, therefore, such developments indicate the effective working of the competitive system and not an abuse of competitive selling.

(9) The evidence before the Commission in regard to the sale of what are called "traffic lines" of electric appliances illustrates some other aspects of competitive selling. Representations were made to the Commission by several manufacturers and trade groups that popular branded "traffic lines" such as electric polishers, food mixers, irons, kettles, etc., were persistently being sold by some dealers in metropolitan markets at very low prices. The evidence shows that such appliances are distributed by the manufacturer through wholesale dealers to retailers and, in some cases as well, by the manufacturer through his own wholesale division to retailers. The manufacturer normally suggests both a retail price and the prices in single units or in quantity on sales by a wholesaler to a retailer. Some large volume dealers consider the

margins suggested by the manufacturer to be too wide, and the application of what they regard as a profitable and realistic markup results in a price substantially lower than that suggested by the manufacturer. The price of such dealers may be lowered further if they purchase such articles in large quantities and secure from the wholesaler a lower cost price than that suggested by the manufacturer. Apart from situations of this kind which are of the nature of those already discussed, traffic appliances appear to have been featured at low prices by some dealers as a method of maintaining consumer interest. In some cases the articles have been featured as a special sale at prices which provided a margin over cost, and, because of the large quantity sold with little or no increase in general costs, the dealer found the sale profitable, even with a reduced margin on each unit. In this respect the dealer's action is somewhat similar to that of a manufacturer who attempts to widen the market for his product by substantially reducing the price. According to trade reports R.C.A. Victor Company in the United States recently reduced the price of long-playing records,(1) by as much as 40% in some cases, presumably in the belief that such a substantial reduction would greatly enlarge its volume of sales. Although it was argued by some trade representatives that a permanent reduction in price by a manufacturer differed from a special price for a limited time by a dealer, the Commission believes that both are designed to attract and make effective consumer demand which was not reached at the higher price.

Because of the increasing popularity of certain branded lines of traffic goods, they appear to have been used by some sellers as a regular item for advertising purposes, and rivalry among dealers who rely heavily on advertising appears to have resulted in traffic appliances being featured consistently in some markets at relatively low prices. Only one or two instances were actually described as sales below net cost to the seller, but in some others it was indicated that keen competition had lowered margins somewhat more than would have prevailed under other conditions. It may be that a condition is developing in the sale of such standard lines, similar to that which has long existed in the grocery field, where some staple lines are consistently sold at very low markups. To the extent that the featuring of traffic appliances is used merely as an advertising method it does not appear likely to produce effects which would differ from other advertising devices employed extensively. As long as the articles are kept in supply and made attractive to the public, consumers will secure the advantages of lower prices and the manufacturers will have the benefit of a

(1) Reductions in prices were also made by R.C.A. Victor Company, Ltd., in Canada.

larger demand.

(10) It is the opinion of the Commission that the difficulties which some manufacturers' and dealers' organizations have found in recent developments in the field of distribution are not, in the main, the result of the feature selling of specific articles at extremely low prices, which would necessarily be involved if loss-leader selling were used as a monopolistic device, but are the result of the working out of competitive processes in response to changing conditions.

12. Conclusions as to the Need of Remedial Measures

It will be evident, from the conclusions reached by the Commission on each phase of the inquiry, that no recommendations are made at this time for legislative action. The evidence in the inquiry disclosed many developments in distribution, some of which are unquestionably causing serious and sometimes painful difficulties for a number of retailers and, in some cases, for wholesalers as well. In so far as these difficulties are related to selling practices examined in the inquiry, they appear to be confined to a few large metropolitan centres and to a few lines of trade only. Even in those areas and lines of trade, we have found that the difficulties are not being caused in any significant degree by loss-leading practices of a monopolistic nature, but arise out of changes being brought about by the action of normal competitive forces.

It is probably true that the abolition of resale price maintenance has intensified the operation of competitive forces, thereby quickening the development of these changes. Such changes are to be expected in a dynamic economy, and, while they may create difficulties for some dealers in certain segments of trade, they are productive of benefits to the public which are perhaps most noticeable in the reduction of costs and corresponding reduction in prices.

It must be remembered that in our free economy competition is the great regulating force that operates in the public interest, compelling producers, manufacturers and merchants to seek constantly to improve their methods of production and distribution, so that the prices of their goods as well as their quality will appeal to the buying public. Any legislative interference with freedom of competition, therefore, requires for its justification substantial proof of the serious character of the evil it is designed to correct.

The evidence indicated that at least up to the time of the inquiry, instances which could be considered as suggesting the possibility of grave loss-leading had been quite exceptional and sporadic in nature, clearly insufficient to warrant new legislation for suppression

or control. Nor have we found proof that the abolition of resale price maintenance has led to practices or conditions such as the MacQuarrie Committee had in mind when it spoke of loss-leaders as a monopolistic device detrimental to the public interest.

As indicated earlier in this report, Section 412 of the revised Criminal Code (formerly Section 498A) provides a remedy for certain kinds of unfairly low pricing. If indications should appear of the use of monopolistic practices which are not now subject to the prohibitions of the Combines Investigation Act or the Criminal Code it would be possible to inquire into them under the provisions for general investigations contained in the Combines Investigation Act.

Some advertising abuses have been alleged in the inquiry, and it is clearly desirable that advertising of a misleading and fraudulent character should be prevented. The Commission believes that efforts by business men themselves to raise the standards of advertising through business organizations devoted to this purpose should greatly contribute to this result if whole-heartedly supported, supplemented, where necessary, by action under the section of the Criminal Code which makes it an offence to advertise in a misleading or fraudulent way.

(Sgd.) C. R. Smith
Chairman

(Sgd.) A. S. Whiteley
Member

(Sgd.) Guy Favreau
Member

Ottawa,
March 28, 1955.

APPENDIX

LIST OF WITNESSES AND APPEARANCES AT HEARINGS

Brooks, M. D. 1524-1597
General Merchandising Manager, Northern Electric Company Limited, Montreal, P. Q.

Campbell, G. 1050-1106
General Sales Manager, The Easy Washing Machine Co., Ltd., Fairbank, Ont.; member of delegation, Canadian Home Laundry Manufacturers' Association, Hamilton, Ont.

Carroll, Joseph H. 1004-1018
Toronto, Ont.

Cary, R. 330-370
General Manager, Drug Trading Company Limited, Toronto, Ont.

Cavers, Fred R. 596-638
President, Cavers Bros. Ltd., St. Catherines, Ont.

Cavers, W. A. 596-638
Vice-President and Secretary-Treasurer, Cavers Bros. Ltd., St. Catharines, Ont.

Cawker, J. G. 3651-3742
Immediate Past President, Canadian Retail Hardware Association, Toronto, Ont.

Chater, G. A. 446-541
President, White Hardware Limited, Toronto, Ont.; member of delegation, Canadian Wholesale Hardware Association, Toronto, Ont.

Cole, W. G. 48-125
Sunbeam Corporation (Canada) Limited, Toronto, Ont.; member of delegation, Canadian Manufacturers' Association, Toronto, Ont.

Corlett, M. E. 1663-1729
Counsel, Allied Beauty Equipment Manufacturers' & Jobbers' Association, Toronto, Ont.

Crawford, Hugh 2830-3012
Vancouver Zone Manager, Canada Safeway Limited, Vancouver, B. C.

Crelinsten, Abe 1773-1802
Proprietor, The Music Bar Inc., Montreal, P. Q.

Crowder, J. T. 446-541. 1636-1662
Secretary-Manager, Canadian Wholesale Hardware Association, Toronto, Ont.

Currie, D. G. 48-125
Charles E. Frosst & Co., Montreal, P.Q.; member of delegation, Canadian Manufacturers' Association, Toronto, Ont.

Darroch, H. C. 902-1033
Vice President, Moffats Limited, Toronto, Ont.; member of delegation, Canadian Electrical Manufacturers Association, Toronto, Ont.

Deachman, Grant 2621-2828
General Manager, Retail Merchants' Association of Canada, British Columbia, Vancouver, B. C.

Dineberg, Cecil 1202-1302
Member of delegation, Retail Tobacco Association of the Province of Quebec, Montreal, P. Q.

Dollar, Doug 300-329
Mercury Photo Service Ltd., Toronto, Ont.; member of delegation, Master Photo Dealers' & Finishers' Association, Toronto, Ont.

Dorion, Paul 1202-1302
Secretary, Retail Tobacco Association of the Province of Quebec, Montreal, P. Q.

Dubuc, Paul 2201-2301
Sales Manager, Génin Trudeau & Cie Limitée, Montreal, P.Q.

Duck, George 2536-2619
Member of delegation, Victoria Branch, Canadian Association of Radio & Appliance Dealers, Victoria, B. C.

Duhamel, A. J. 1402-1442
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